(2005) 08 AP CK 0055

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 797 of 1995

Athaluri Buchi Naidu (died) per L.Rs. and Another APPELLANT

Vs

Athaluri Rukma Bai and Others RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Evidence Act, 1872 — Section 91, 92

Citation : (2005) 08 AP CK 0055

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M. Srinivasa Rao, for the Appellant; Y. Srinivasa Murthy, for the Respondent

Judgement

P.S. Narayana, J.—The unsuccessful plaintiffs aggrieved of the decreeing the suit partly and negativing the relief partly in O.S. No. 120/85 on the file of Subordinate Judge, Machilipatnam had preferred the present Appeal. The 1st plaintiff in the suit, the 1st appellant in the Appeal, died and appellants 3 to 7 are brought on record as legal representatives of the deceased 1st appellant by order dated 3-2-2000 in C.M.P. No. 26454/99. The respondents herein are the defendants in the suit.

2. The parties would be referred to as "plaintiffs" and "defendants" hereinafter for the purpose of convenience.

3. The plaintiffs filed the suit against the defendants for partition of the plaint schedule property into shares 41:32:9:18 to plaintiffs 1 and 2 and defendants 1 to 3 respectively and to deliver the plaintiffs share or its value to them, to direct the defendants to account and pay profits or damages to the plaintiffs with subsequent interest and for costs. The trial Court on appreciation of the evidence of PW-1 and DW-1, the 1st plaintiff and the 1st defendant, and also Exs.A-1 to A-11 and Exs.B-1 to B-53, decreed the suit partly passing a preliminary decree in relation to the suit property of an extent of 1461/2 sq. yards in S. No. 256 in

Ambaraiah Agraharam, Englishpalem at Machilipatnam and the assets of the rice mill situate thereon with all electrical appliances to be divided into 100 shares and put the plaintiffs in possession to an extent of 25 shares and 16 shares respectively and put to 1st defendant in possession of 32 shares, 2nd defendant to an extent of 9 shares and 3rd defendant to an extent of 18 shares and the rest of the claims of the plaintiffs in respect of the vacant site of 1306 sq. yards and terraced building thereon had been negatived. Hence the Appeal.

4. Sri Srinivasa Rao, the learned Counsel representing the appellants had taken this Court through the respective pleadings of the parties, the Issues settled and the findings recorded by the trial Court and would maintain that in the facts and circumstances by wrong casting of burden of proof a portion of the relief had been negatived to the plaintiffs. Hence the said findings so far as they relate to the negativing of the relief in relation to a portion of the plaint schedule property cannot be sustained. The learned Counsel also would submit that the settlement deed Ex.A-1 was not appreciated in proper perspective and the co-ownership of the properties covered by Ex.A-1 had been clearly established and Ex.A-1 should have been read as a whole. The learned Counsel also would comment that either Ex.A-1 to be relied upon as a whole or to be rejected as a whole and unless the same is effected by a regular sale deed, the parties are bound by the same. The learned Counsel also had drawn the attention of this Court to Sections 91 and 92 of the Indian Evidence Act 1872 and would comment that the recitals of Ex.A-1 are clear and categorical and hence the findings recorded negativing a potion of the relief cannot be sustained. The Counsel also placed reliance on Ex.B-16 partnership deed which reiterates the terms and conditions of the settlement deed Ex.A-1. The learned Counsel also had drawn the attention of this Court to Exs.B-6, B-9, B-11 and B-12 and had commented that in the light of these legal notices since the 1st defendant had not claimed any independent right relating to 1306 sq. yards and the terraced building thereon the respective shares should have been given in the said property also in the light of the recitals in Ex.A-1. The Counsel also would comment that the tax amount paid under the documents marked as Ex.B series were in fact debited in the partnership account.

5. Per contra, Sri Srinivasa Murthy, the learned Counsel representing the respondents had taken this Court through the findings recorded by the trial Court and would comment that even the portion of the relief had been granted in view of the evidence of DW-1 and not on the strength of Ex.A-1. In view of the fact that on certain admissions made by DW-1 the relief had been granted partly, it cannot be said that the findings recorded by the trial Court suffer from any legal infirmity whatsoever. The learned Counsel also had taken this Court through the evidence of DW-1, the findings recorded and also Exs.B-1 to B- 53 and would comment that in the light of the same, the contents of the document were not known to the defendants and these aspects had been appreciated in proper perspective by the trial Court and arrived at the correct conclusion and hence the said findings need not be disturbed.

6. Heard the Counsel on record.

7. The respective pleadings of the parties are as hereunder :

The plaintiffs pleaded in the plaint as hereunder :

The plaintiffs are the sons of late Venkataratnam and late Seshamma (1st wife of Venkataratnam). The husband of 1st defendant Athaluri Srikrishnayya and the 2nd and 3rd defendants are sons of late Venkataratnam through Smt.Dhanalakshmi, 2nd wife of late Venkataratnam. The plaintiffs and defendants were members of Hindu Undivided Family and later they separated. The 1st defendant purchased a building and site, part of schedule property. The family acquired a part. The 1st plaintiff erected a rice mill therein with the approval and consent of the 1st defendant and others viz., 2nd plaintiff and defendants, contributing monies amounting to Rs. 70,000/-. The shares are respectively 1st plaintiff : Re.0-25 ps, 2nd plaintiff Re.0-16 ps., 1st defendant including value of site and building Re.0-32 ps, 2nd defendant Re.0-09 ps and 3rd defendant Re.0-18 ps. After working for some time, the plaintiffs and the three defendants entered into a settlement and executed a settlement deed on 4-10-1966. They got it registered on 4-2-1967. The plaintiffs and the defendants became co-owners of the site and building and the rice mill. The prior building was converted into the godown. The 1st plaintiff was managing leasing out the mill and taking licenses in his name and he rendered accounts and all the co-owners agreed as per resolution dated 25-10-1969. All the parties wanted the 2nd defendant to be also in management. So for 1971, 1973 the 2nd defendant officiated. But the plaintiff and the 2nd defendant leased out the mill for one year eleven months and eleven days from 19-12-1973 to 30- 11-1975. One Juluri Venkata Purna Lingamurthy ran the mill. He paid rents to all proceedings-rata. Then the 1st plaintiff had been residing in his native village, Kondavaram. Thereafter the defendants took possession of the schedule property. The defendants did not renew and take out the license refusing plaintiffs 41 paise share of rent. The plaintiffs and the defendants are close relations. The 1st plaintiff being the eldest and the 1st son of Sri Venkataratnam, wanted to keep the family prestige, honour and dignity and attempted patiently to settle the dispute and run the mill for the benefit of all but the defendants were evading. Then the plaintiffs got issued notices to the defendants to repair and run the mill jointly, but the defendants kept quiet. The schedule property is getting spoiled due to disrepairs. The non-chalance is criminal. The property is to be repaired and run the mill for the benefit of all, but the defendants previously prevented the repairs and running of the mill. The defendants are all responsible for loss of profits since 30-11-1975. The mill if leased out fetches not less than Rs. 10,000/- per year. The plaintiffs will get Rs. 4100/-, 1st defendant will get Rs. 3200/-, 2nd defendant will get Rs. 900/- and the 3rd defendant gets Rs. 1800/-. The defendants are responsible for the loss. Thus all of them are liable to pay at that rate with subsequent interest at 12% per annum at least towards damages. They are liable to replenish the loss to plaintiffs. The defendants are liable to partition the property in case they do not opt to run the mill. The mill as it is is not in a partible condition and the property is to be auctioned in public market and the price is to be divided according to the shares pro-rata. The three defendants are liable to pay the loss to defendants. The plaintiffs got notices issued to the defendants on 9-9- 1985. The 1st defendant received it on 10-9-1985. The 3rd defendant received it on 13-9-1985. The acknowledgement of the 2nd defendant is not yet received. Only the 1st defendant gave a false and a belatedly reply only on 21-9-1985 saying that his Advocate Sri P. Sitaramarao was unwell, and so a detailed reply follows after ten days. In fact the said Advocate was attending the Court. Interalia the 1st defendant denied the right of the plaintiffs with false allegations.

The 1st defendant filed written statement pleading as hereunder : The 1st defendant purchased the site of an extent of 1306 sq. yards with a terraced building therein with her own funds under registered sale deed dated 1-10-1954. The adjoining 1461/2 sq. yards of site was purchased by the plaintiffs and the defendants 2 and 3. The 1st plaintiff is the eldest member of the family and all the defendants respected him and did not question his actions and implicitly followed his directions. The plaintiffs have to prove the allegations that the 1st defendant had Re.0-32 ps. share in the rice mill and the other parties to other shares mentioned in the plaint which included the value of the site. The 1st plaintiff asked the defendant to put their signature on the document on 4-10-1966 without revealing the contents of the same. Out of respect and confidence the 1st defendant and other defendants put their signatures in the said document. She was never informed about the contents of the said document and it cannot be said that she executed the same on 4-10-1966. The 1st defendant obtained a copy of the same in the year 1985 and came to know about the contents. The allegations of the plaintiffs that the plaintiffs and the defendants became co-owners of the site and building and rice mill described in the suit schedule under the said settlement deed are all false. The site of 1306 sq. yards with terraced building was of with old Door No. 19/362 always belonged to the 1st defendant and never parted with nor alienated the same muchless to the plaintiffs. The 1st defendant alone had been paying all necessary taxes for the said property. It is true that the 1st plaintiff had been managing the rice mill and obtained licence in his name. The allegation that he rendered accounts and that all the co-owners agreed as per resolution dated 25-10-1969 and 20-12-1969 are all false. The 1st plaintiff obtained the signatures of the defendants in the month of March 1967 on another document representing that it was a partnership deed concerning the rice mill. The contents of the said document were never made known to the 1st defendant. The 1st defendant never wanted the 2nd defendant to be also in management and officiated the rice mill from 1972 to 1973. The 2nd defendant was employee at Bhimadolu during that period. It is true that the rice mill was leased out to one Juluri Linga Murthy till 30- 11-1975. The 1st plaintiff got issued a notice in the year 19785 for which a proper reply was sent. The 2nd defendant came to learn that the plaintiffs refused to receive the notice sent by the 2nd defendant for a meeting to be held on 23-11-1975 to discuss about the leasing out the rice mill for subsequent period. At that time, the 1st defendant and her husband were residing at Kondavaram and it is false to allege that the defendants took possession of the rice mill after the lease period of the said Linga Murthy was over. It is curious to allege that the defendants did not take out a licence for the rice mill when the licence actually stood in the name of the 1st plaintiff and he would have renewed the licence. The 1st plaintiff being the eldest member of the family, the defendants never questioned his management and his allegation that he attempted to settle the dispute patiently to keep up the family prestige and dignity to run the mill for the benefit of both parties is false. The 1st defendant and her husband who is the brother of defendants 2 and 3 shifted to Machilipatnam in 1976 and they resided in the house of one Dr.Krishna Mohan in Frenchpet. The rice mill was damaged in cyclone that occurred in 1976 and it was occupied by the poorer sector. The 1st plaintiff never took any steps to get them vacated. In November, 1977, there was another cyclone and the site and the building thereon were taken possession by the Collector of Krishna for relief purposes and it was so till the month of July 1980 when the 1st defendant and her husband entered into possession of the said site and terraced building and began residing there in two rooms at the first instance to safeguard the mill property and other property and when it was vacated, they occupied it. The property was completely damaged because of cyclone and occupied by others. The 1st plaintiff got the electrical service connection of the rice mill disconnected as it stood in his name in 1976. Gradually the 1st defendant and her husband made the property fit for residing and obtained a domestic electrical connection in her name in the year 1985. She also spent about Rs. 2000/- for the said purpose. The defendants never received any notice from the plaintiffs to get the mill repaired and run jointly as alleged by the plaintiffs. The defendants are not responsible for any loss of profits since 30-11-1975 for the alleged non-cooperation and prevention to run the mill. The plaintiffs are estopped from raising this contention and they have no right to blow hot and cold. Because of the conduct of the 1st plaintiff the mill remained closed especially when the 1st plaintiff failed to got the licence renewed. The plaintiffs have no right to seek for partition of the super structures of the rice mill which are situated in the site belonging to the 1st defendant and yet the defendants have no objection for its disposal and the division of electricity deposit amounting to Rs. 10,000/- and other deposits which are with the authorities. The movable properties used for the mill like motor etc., were all damaged due to the gross negligence of the plaintiffs and they also can be disposed of in accordance with law. The 1st defendant has no right in 146 1/2 sq. yards site referred to in the plaint schedule. The defendants got issued a reply notice dated 9-9-1985 issued on behalf of the plaintiffs. A full reply was issued by the 1st defendant through her advocate only on 25-10-1985 as her advocate was unwell. The defendants 2 and 3 also gave proper replies. The suit is speculative and without any basis and the court fee paid on the plaint is not correct. There is no cause of action to file the suit and the suit is liable to be dismissed.

The 2nd defendant filed memo adopting the written statement filed by the 1st defendant. Similarly, the 3rd defendant also filed adoption memo and also further pleaded that the 1st item of the plaint schedule property measuring 1306 sq. yards and the terraced building was purchased by the 1st defendant with her own money. Neither the plaintiffs nor the defendants 2 and 3 had any right whatsoever in it. The claim of the plaintiffs regarding the said property is without any legal right. So far as the item of site measuring 1461/2 sq. yards described in the schedule was purchased by the plaintiffs, defendants 2 and 3 and their brother Krishnaiah who is the husband of the 1st defendant and also their father by name Venkata Ratnam under a registered sale deed on 2-1-1957. At the time of signing the document on 4-10-1966, the defendants 2 and 3 were not informed the details of the same and they never intended to execute such a document to become co-owners of the 1st plaintiff with respect to the house and site purchased by her. The 1st plaintiff in spite of his management in business, never rendered accounts to the defendants at any time. As a matter of fact, the 1st plaintiff obtained licence for running rice mother-in-law and obtained a lease of the building and site belonged to the 1st defendant for ten years for constructing the rice mill in the said site and adjoining site of 1461/2 sq. yards. The husband of the 1st defendant invested necessary capital to the tune of Rs. 20,000/- towards his share in the construction of the rice mill. At the time of execution of the partnership deed, in stead of the name of the 1st defendant''s husband, the name of the 1st defendant herself was included as a partner having the share of Re.0- 32 ps. in the rice mill business. At the time of obtaining the signature of the 1st defendant on the partnership deed dated 7-3-1967, the contents of the same were not informed to the 1st defendant. The 1st plaintiff being eldest member of the family was implicitly believed and his instructions were followed by all the brothers of the family. The defendants denied the fact that they have executed a settlement deed dated 4-10-1966. Their signatures were obtained by the 1st plaintiff on the said documents without informing the contents thereof. The 2nd defendant was working in Bhimadolu in 1972 and 1973 and did not officiate the rice mill and he acted only at the directions of the plaintiffs. The defendants 2 and 3 were not in possession of the rice mill and had no control over it muchless in 1975 or thereafter. The 1st plaintiff alone was in the management of the said rice mill holding licence and it was his duty to get the licence renewed from time to time. The defendants cannot be held liable for any loss. The defendants issued a proper reply to the notice dated 9-9-1985 issued by the plaintiffs. The plaintiffs have no right to seek for partition of the super structures of the rice mill which is situated in the site belonging to the 1st defendant and yet these defendants have no objection for its disposal and for the division of electricity deposit amount of Rs. 10,000/- and other deposits. The machinery in the rice mill was also damaged due to gross negligence of the plaintiffs and they can be disposed of in accordance with law and the suit is liable to be dismissed.

8. On the strength of the respective pleadings of the parties, the following Issues were settled :

1. Whether the settlement deed dated 4-10-1966 was obtained by the 1st plaintiff from the defendants without their knowledge of the contents therein ?

2. Whether the plaintiffs are entitled for partition and possession of the schedule property ?

3. Whether the plaintiffs are entitled for profits ?

4. To what relief ?

9. In the light of the submissions made and the findings recorded by the trial Court, the following Points emerge for consideration in this Appeal :

1. Whether the granting of preliminary decree only to an extent of 1461/2 sq. yards in S. No. 246 of Ambaraiah Agraharam and negativing the relief for the rest of the portion can be sustained in the facts and circumstances of the case ?

2. If so to what relief the parties are entitled to ?

10. POINT No. 1 : As already referred to supra, the 1st plaintiff was examined as PW-1 and the 1st defendant was examined as DW-1. The documents marked on behalf of the respective parties are as hereunder ;

For plaintiffs :

Ex.A-1 dated 4-10-1966 Registered settlement deed between PW-1 and four others

Ex.A-2 dated 4-10-1991 Death registration extract

Ex.A-3 dated 25-10-1969 Resolution book

Ex.A-4 dated 9-12-1973 Copy of resolution

Ex.A-5 dated 16-12-1973 Copy of resolution

Ex.A-6 dated 9-9-1985 Office copy of registered notice issued by PW-1 to the defendant

Ex.A-7 dated 21-9-1985 Reply registered notice issued by 1st defendant to PW-1

Ex.A-8 dated 25-10-1985 Reply registered notice issued by 1st defendant''s Advocate to PW-1

Ex.A-9 dated 28-10-1985 Reply registered notice issued by defendants 2 and 3 to PW-1

Ex.A-10 dated 14-10-1991 Registration extract of Death Certificate

Ex.A-11 dated 14-10-1991 Registration extract of Death Certificate

For defendants :

Ex.B-1 dated 29-1-1992 Notice

Ex.B-2 Resolution book relating to firm

Ex.B-3 dated 29-10-1975 Notice

Ex.B-4 Notice Order 12 Rule 8 C.P.C.

Ex.B-5 Notice Order 12 Rule 8 C.P.C.

Ex.B-6 dated 2-11-1975 Registered notice

Ex.B-7 dated 6-11-1975 Postal acknowledgement

Ex.B-8 dated 11-11-1975 Rejoinder notice

Ex.B-9 dated 17-11-1975 Office copy of registered notice

Ex.B-10 dated 19-11-1975 Postal acknowledgement

Ex.B-11 dated 24-11-1975 Notice containing the signature of Sri A.Subbarao, Advocate

Ex.B-12 dated 25-11-1975 -do-

Ex.B-13 6-2-1967 & 8-4-1970 Papers containing accounts which were shown in the handwriting of PW-1

Ex.B-14 dated 12-11-1975 Postal endorsement on the registered notices

Ex.B-15 dated 1-10-1954 Registration extract of sale deed executed by Satyanarayana in favour of DW-1

Ex.B-16 dated 7-3-1967 Copy of partnership deed

Ex.B-17 dated 5-12-1973 Notice issued by Managing partner Sri Dhanalakshmi Vilas Rice Mill

Ex.B-18 dated 5-11-1975 Notice issued by one of the managing partner of Sri Dhanalakshmi Rice mill

Ex.B-19 dated 9-9-1985 Registered notice issued by the plaintiff to the defendant

Ex.B-20 dated 4-10-1966 Registration extract of settlement deed

Ex.B-21 Demand notice issued by Municipal Commissioner

Exs.B-22 to B-28 Demand notices

Exs.B-29 to B-51 Tax receipts

Ex.B-52 Summons in S.T.C. No. 459/76 issued by Additional Judicial First Class Magistrate, Machilipatnam

Ex.B-53 Certificate issued by the Registrar of Firms in respect of the rice mill firm of the parties

The learned Judge recorded findings in detail and while appreciating Ex.A-1 came to the conclusion that the contents were not known and interpreting the terms of the document and also the evidence of DW-1 in particular, a portion of the evidence of PW-1 had been disbelieved and on the admission made that she has nothing to do with the property of 1461/2 sq. yards, the respective shares had been given and since she had claimed exclusive right over the other property the relief had been negatived. It may be appropriate to have a look at the contents of both Exs.A-1 and Ex.B-16 in this regard. Ex.A-1 is dated 4-10-1966, no doubt registered on a subsequent date, the registered settlement deed between the parties, and its translated version reads as hereunder :

I. Value of the document :

Settlement deed for Rs. 70,000 (Rupees Seventy thousand only).

2. Date : Executed on 4th day of October, 1966 corresponding to 12th day (Tuesday) Bhadrapadha of the year Prabhava 1888 SE.

3. Executed in between : Athaluri Venkata Ratnam''s sons namely; (1) Butchi Naidu, (2) Pattabhi Ramaiah, (3) Lakshman Rao, (4) Venkateswara Rao, (5) Athaluri Sri Krishnaiah''s wife Rukma Bai, occupation : Agriculture and land properties, resident of Kondavaram, Yaddanapudi (Post) viz., Movva H/o. Peddamuttevi of Pamarru Sub-Registry office, Krishna District.

4. Nature :

1) That parties 1 to 4 out of us are related as brothers and that 5th party out of us is related as wife of Sri Krishnaiah who is related as younger brother to parties 1 and 2 out of us and the elder brother of parties 3 and 4 out of us.

2) That the 5th party out of us had on 1-10-1954 purchased site admeasuring 1306 sq. yards together with terraced house consisting of verandahs on the rearside and on the front side etc., situated in Survey No. 246 of Ward No. 19 in Ambarapu Agraharam of Englishpalem in Bandar from Athaluri Satyanarayanamma for a sale consideration of Rs. 16,000/-. Subsequently the 1st party out of us set up a rice mill there called as "Sri Dhanalakshmi Vilas Rice Mill". The said Rice Mill was housed in a tin sheets shed and fitted with 20 HP motor and 3 feet sheller stone and a separator which having 36 chambers and 2 Hullers etc., and thus constructed the said Mill with the above machinery items. In the above mill the 1st party of out of us had invested Rs.17,500/- and 2nd party invested Rs.11,200/- and 3rd party invested Rs.6300/- and 4th party invested Rs.12,600/- and the 5th party invested Rs.6400/-. That 5th party out of us while including aforesaid investment of Rs.6400/- along with site and terraced building had invested a total sum of Rs.22,400/-.

3) As transaction problems arose in obtaining licence etc. before installing the said rice mill the mill was not run till 15-3-1962.

4) That parties 1 and 5 on behalf of all the parties out of us gave the Mill on

lease i.e., from 15-3-1962 till 30-11-19763 in favour of Paruchuri Siva Ramaiah and from 11-12-1963 till 30-11-1966 in favour of Varada Venkata Krishna Subbarao and got the lease agreement deed etc. In that manner we have been taking the lease amount so realized in the proportion of our capital investments.

5) That on account of some problems experienced by parties 2, 3, 4 out of us without executing any document previously we have been continuing the state of affairs only on the name of parties 1 and 5 out of us. That as the 1st party out of us has spent more money in the said mill affairs and as differences arose in between 1st party and parties 2 to 5 out of us in the matter of expenses so incurred and as per advise of the elders and finding that it is better to have a settlement deed executed in writing without giving room for the differences in future we get this document executed.

6. Therefore shares has been fixed in the A, B and C schedule properties in between us i.e., the 1st party shall have 0-25 ps. share, 2nd party shall have 0-16 ps. share, 3rd party shall have 0-09 ps. share, 4th party shall have 0-18 ps. share and the 5th party shall have 0-32 ps. share in all 1 Rupee = Rs.70,000/-.

7. Therefore it has been settled that we shall bear the profits and losses in the proportion of the above said shares. That as still the proceedings are going on the courts in the matter of the said Mill it is settled that we shall spend money in the proportion of our shares after mutually consulting with one and another and shall bear the expenses occasioned thereby.

8. It was settled that if any party out of us intend to sell away his share to any party chosen by him he has got right to do so. For that the other share holders should not raise any objection.

9. It was settled that if investment has to be made for the improvement of the said Mill or for incurring expenditure for carrying repairs of the Mill that investment has to be made by us in the proportion of our capital.

10. It is settled that in the proportion of the shares mentioned in para No. 6 supra, the properties mentioned hereunder schedule shall devolve upon the heirs of the above parties to be enjoyed with absolute rights.

11. It was settled that all the miscellaneous taxes and the penalties going to be imposed and deposits to be made in respect of the properties mentioned in the schedule hereunder and payable to the Government authorities and Machilipatnam Municipal Authorities shall be borne by us in the proportion of our shares. A Schedule : Particulars of the site and terraced building standing therein which has been purchased by 5th party out of us on 1-10-1954 and got the sale deed registered as Document No. 3813/1954 at page No. 156 of Volume No. 806 in Book No. I in the office of the Sub-Registrar, Bandar on 9-12-1954 and situated in Ambavarapu Agraharam, Englishpalem, which has been included in Bandar Municipality area under the jurisdiction of Sub-Registrar, Bandar, in Krishna District are as follows :

B Schedule :

Sheds constructed with tin sheets and standing on the name of 1st party out of us in the A schedule site and inclusive of 20 HP electrical motor fittings and 3 oil sheller stones, 2 hullers and 36 chambers separator etc., articles and entire machinery items of the property.

C Schedule : Particulars of the property purchased by Athaluri Venkata Ratnam and others on 2-1-1957 and situated Eastwards to the A schedule property and annexed to the said property and got the sale deed registered as Document No. 1/1957 in Volume No. 845 of Book No. I in the Office of the Sub-Registrar, Bandar on the very same date are as follows :

It has been settled that the parties mentioned in para No. 6 supra, shall enjoy the properties mentioned in above A, B, C schedules in the proportion of their shares with absolute rights and enjoyment. Others will not have any rights upon the above properties. This is the settlement deed got executed with the consent of all of us.

Sd/- Athaluri Butchi Naidu Sd/-Athaluri Pattabhiramaiah Sd/- Athaluri Lakshman Rao Sd/-AthaluriVenkateswararao Sd/-Athaluri Rukma Bai

Witnesses: I have read all the contents in this document. While admitting all the matters written therein as true, I am affixing my witness signature.

Sd/- Athaluri Sri Krishnaiah Sd/- Athaluri Dhanalakshmamma Sd/- Athaluri Rameshamma Sd/- Ghattamaneni Venkata Lakshmamma Sd/- Uppalapati Seshamma Sd/- Vemuri Rajeswaramma Sd/- Chandra Vimala Kumari

Registration Endorsement : Presented between 3 and 4 P.M. on 4th day of February 1967 corresponding to 15th day of Magh 1888 SE in the office of the Registrar, Krishna and a fee of Rs.408/- was paid by Sd/- Athaluri Butchi Naidu Execution admitted by :

Identified by : 4th February 1967 15th Magh 1889

Sub-Registrar Sd/- xxxxx

Registered as Document No. 889/1967/1889 SE at page Nos. 27 to 30 in Volume No. 1036 of Book No. I

Note : The valuation of the property is Rs.75000/- as determined by the D.R. and Collector under the I.S. Act 1899 in his order No. GI/1016/1967 dated 9-4-67 and compoundary fee of Rs.175/- is to be levied.

Ex.B-16 is a copy of the partnership deed dated 17-3-1967 and the contents of the said document are as hereunder : PARTNERSHIP DEED

1 and 2 : Partnership deed for the executed on 7th day of March 1967, unanimously by the partners of M/s.Sri Dhanalakshmi Vilas Rice Mill Owners Co., situated in Englishpalem, Bandar, Krishna District is as follows :

4. Nature : That parties 1 to 4 out of us and husband of the 5th party out of us happened to be the divided brothers. That having partitioned our joint family properties through document No. 10/55 dated 22-12-1954 and having maintaining separate mess and residence, we are living separately and leading our lives. Having constructed a rice mill from 1957 to 1962 under partnership basis, we have been leasing out the rice mill from 15-3-1962 onwards. Having verified the expenses incurred by us during the construction of the said mill, and having verified the income realized by us in respect of rentals, while keeping the mill in working order and having verified the accounts and expenses. We approved the same to the effect that they are proper and in order. That on 4-10-1966 we caused one settlement deed executed to the effect that all the five partners out of us shall have rights and responsibilities in the proportion of our shares in the entire movable and immovable properties of the said mill and got the same registered. Having felt that it is better to have this partnership deed executed with regard to the important matters pertaining to our business and subject to the aforesaid settlement deed have caused this document executed.

5(a) Capital : That all the five partners while making necessary investments for the firm construction got the income and expenditure recorded in our respective accounts. If the capital invested by us is found not sufficient and require more investment we shall determine the matter beforehand with the consent of all of us and to act upon as per the resolution passed thereof.

(b) New borrowals: That apart from the investments made by us till today and if the business requires additional capital investment, Athaluri Butchi Naidu out of us is empowered to borrow money either from others, or from banks, either upon promotes or upon keeping the properties of the firm as security. It has been decided that the money so borrowed by him shall be recorded in the income and expenditure of our firm books, and that all our partners shall be liable for the amounts so recorded in the accounts books in the proportion of our shares. (Clause 5(b) is cancelled).

(c) Management: That the first party out of us namely Athuluri Butchi Naidu shall be empowered to look after the affairs of our firm i.e., maintaining accounts, looking after licencing matters, paying taxes then and there, to execute the rental contract on behalf of our firm to the lessee when the rice mill has been given on lease, to cause the documents written by lessee and to conduct partners meeting yearly once, and to inform the partners about business transactions, profit and losses and etc., matters, and for effecting repairs of the mill exceeding Rs,.1000/- then and there if felt necessary.

(d) Accounts, profits and loss sharing : - It is settled that to maintain the accounts of our firm then and there in a proper manner and to close the accounts of the firm by 30th November every year, and to determine the profit and loss thereby and to record the said profit and loss to the accounts of the partners as mentioned in clause No. 3.

is settled that to grant the rice mill of our firm on lease or in alternative if we all so prefer shall run the mill personally. It is settled that for discussing the affairs of our firm and to discuss accounts etc., matters to convene the meeting of our partners yearly at least once and to pass resolutions accordingly. It is settled that at least 4 partners shall have to be present for the meeting.

It is settled that if any one of our partners intends to sell away his share, he shall intimate his intention in writing one month before to the remaining partners the rate expected by him. If the remaining 4 partners did not like to purchase the said share, the partner who intends to sell away his share is having right to sell his share at his choice to any person not exceeding one. It is decided that if any of our partners happens to die untimely or if he happens to be disqualified otherwise, the firm shall not stand dissolved but the same to be continued. That in case of family partition effected in respect of our partners it is settled that his share in the mill shall stand transferred not exceeding one.

That subject to the terms and conditions in this deed, and subject to the resolutions passed as per majority opinion in the partners meeting in future, it is settled to continue the transactions of our firm.

This is the partnership deed got executed with the consent of our partners.

Witnesses :

The other documents already had been referred to supra. The stand taken by the defendants is that they just believed the words of the 1st plaintiff and signed the document and in fact they were putting signatures at whatever place he required in view of the belief which they had. The fact that they signed the settlement deed Ex.A-1 is not in serious dispute, but the stand taken by them is that they signed the document without knowing the contents of the document. Though several persons attested and though a finding had been recorded that a few of them are no more, it is not known why none of the witnesses concerned with Ex.A-1 had been examined. It is needless to say that when the specific stand had been taken by the defendants is that they had subscribed their signatures to Ex.A-1 without knowing the contents thereof, in relation to under what circumstances the said document came into existence and what actually had transpired between the parties, except the interested testimony of the 1st plaintiff and the 1st defendant no other evidence is forth coming. In such circumstances, the trial Court having recorded a finding that the burden is on the defendants to prove the same, granting the relief relating to a portion of the property and negativing the relief to the rest of the portion unless the defendants were able to discharge the burden cast upon them, cannot be sustained. In this view of the matter, the burden of proof had not been appreciated in proper perspective by the learned Judge.

11. The parties are very close relatives. It is also true that the suit is a very old one and the 1st plaintiff is no more and the legal representatives are brought on record. The only question which may have to be decided is whether the relief to

be granted in relation to the first item of the plaint schedule property also of an extent of 1306 sq. yards with building thereon in the light of the facts and circumstances of the case. It is true that Exs.B-1 to B-28 and B-29 to B-51 stand in the name of the 1st defendant only, but the crucial question is whether this property had been thrown into the partnership property so as to be amenable for division between the family members or the partners as the case may be, or whether it is to be treated as exclusive property of the 1st defendant, which may have to be decided. In the light of the same, it would be just and proper if the other living witnesses to the transaction Ex.A-1 and also the persons concerned with Ex.B-16 are examined so as to explain whether this property had been thrown into the partnership property to be treated as property of all the co-owners by virtue of Ex.A-1 or not may have to be decided in the light of other acceptable evidence apart from the evidence of DW-1 which is already on record. In that view of the matter, it is a matter to go back. It is true that PW-1 also had not made any attempt to adduce further evidence but evidently in the light of the stand taken by the defendants, it might have been thought of that no further evidence is necessary. However, it would be just and proper to give opportunity to both the parties to adduce further evidence to the limited extent which had been referred to supra. It is needless to say that the preliminary decree already granted in relation to 1461/2 sq. yards in S.No.246 of Ambaraiah Agraharam, inasmuch as it had attained finality, the same is not being disturbed.

12. POINT No.2 : In the light of the findings recorded above, the matter is remanded for the limited purpose specified supra giving opportunity to both the parties to let in further evidence by examining the witnesses in relation to Ex.A-1 and Ex.B-16 and also any other witnesses the parties chose to examine to establish the factum referred to supra. Accordingly the Judgment and decree are hereby set aside to the extent of 1306 sq. yards and the building thereon and the matter is remanded for the purpose indicated above to the trial Court. It is needless to say that the trial Court to expedite the trial and decide the matter afresh within a period of six months from the date of receipt of this order. In view of the close relationship between the parties inasmuch as the parties partly succeeded before the trial Court and the plaintiffs were partly unsuccessful the parties to the suit and to this Appeal to bear their own costs.

