

(1957) 12 AP CK 0010

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 36 of 1955

Kakarla Subbayya and Others

APPELLANT

Vs

Makkena Sitaramamma and Another

RESPONDENT

Date of Decision : 11-12-1957

Acts Referred:

Citation : AIR 1959 AP 86

Hon'ble Judges : K. Subba Rao, C.J.; Ranganadham Chetty, J

Bench : Division Bench

Advocate : M.S. Ramachandra Rao and M. Krishna Rao, for the Appellant; D. Narasaraju, General and Y. Suryanarayana, for the Respondent

Judgement

Ranganadham Chetty, J.—This is an appeal under the Letters Patent filed¹ by defendants 1 to 5 against the judgment of Mr. Justice Viswanatha Sastry dated 1-7-1955 in A. S. No. 475 of 1950 reversing the decision of the Subordinate Judge of Bapatla and decreeing the suit with costs.

2. The suit properties are the lands and house sites described in Schedules A, B, C and D annexed in the plaint. Plaintiff, Makkena Sitaramamma, asks for two alternative reliefs:

1. 1/3 share in A and B schedules after partitioning and 1/2 share in D schedule; or

2. The whole of C schedule with mesne profits of Rs. 300 and 1/2 of D schedule. The admitted and indisputable facts of the case are; The Makkena family and the Kakarla family of Thakkellapadu, Ongole Taluk are related to each other. There have been marriage alliances between the two families for a long time. Plaintiff, Sitaramamma, is the widow of Makkena Kotiah who died in or about 1938.

Kotiah's divided brother is Seshaiah (6th defendant) and the mother is Seshamma (7th defendant). She died during the pendency of the suit. The other defendants 1 to 5 are members of the Kakarla family. Defendants 1, 2 and 4 are

brothers. 2nd defendant's son is the 3rd defendant. 4th defendant's son is the-5th defendant.

3. Makkena Seshamma was the daughter of a member of the Kakarla family. Her husband Sub-baiah died long ago leaving three children, namely, Seshaiah (6th defendant), Peramma and Kotiah. Peramma married 1st defendant, Subbaiah. Kotiah is-the husband of the plaintiff. The table set out below makes the relationship of the two families clear:

Makkena Subbaiah = Kakarla Seshamma (D-7) died Lakshmaiah _____	
_____	Seshaiah Kotiah
Peramma = Subbaiah Venkayya Raghavalah (D-6) (died) (died) (D-1) (D-2)	
(D-4) = Sitaramamma (Plff.) Lakshmiah (D-3) Anjiah (D-5)	

After Makkena Subbaiah's death his widow Seshamma (Defendant 7) was living with her sons, Seshaiah (D. 6) and Kotiah. Her daughter Peramma had been married to Kakarla Subbiah who continued to live as a coparcener with his brothers, the 2nd and 4th defendants.

4. In the Makkena family quarrels between Seshamma (D-7) and her daughter-in-law (D-6's wife) precipitated a partition in 1918 between her two sons, Seshaiah and Kotaiah. At that time the younger son Kotiah was about 23 years old but he was a person of low intelligence unable to take care of his own interests. Seshamma, after partition, removed herself to her daughter Peramma's house, taking with her the younger son Kotiah. For about two decades mother and son lived with the Kakarla family.

5. At the partition in 1918 Kotiah was given for his share of the properties of Makkena family 5 acres and 50 cents of lands described in plaint Schedule "C". A provision for Seshamma (D-7) was also made. A plot of land called Basanna Chenu of the extent of 2 acres 58 cents described in D schedule was allotted to her for enjoyment during her lifetime with the remainder to be taken equally by her two sons after her lifetime.

When Seshamma and Kotiah moved into the Kakarla family they were holding and enjoying therein the lands of C and D schedules. After their entry into the Kakarla family and during their 20 years of stay in that family these lands were being cultivated jointly with the family properties of the Kakarlas.

6. Sometime before 1930 Peramma died and her husband, the 1st defendant, separated himself from his brothers, Defendants 2 and 4 taking his share of the family properties and items 4, 5 and 8 of C schedule of the extent of 1.70 acres out of a total of 5-50 acres brought into the family by Kotiah. In 1935 Kotiah married the plaintiff. He died in 1938 leaving a girl just a year old.

Plaintiff was very young then. Claims were made on her behalf for a provision for maintenance for her and her child and the second defendant Venkiah conveyed to her under Ex. B-2 half a gorru of land (Ac. 1.721/2) and gave her Rs. 400 besides, taking in turn a document of release Ex. B-3 from the plaintiff at the

same time. Plaintiff continued to enjoy the land but, ten years later, she came to know about the fraud played on her by the 2nd defendant in regard to Ex. B-3, through the discovery of a document Ex. A-2 which embodied a division of the D schedule properties between the 2nd and the 6th defendants. Thereupon plaintiff filed O. S; No. 64 of 1948, out of which the present appeal arises.

7. Plaintiffs case, in brief, is that there was an arrangement between her husband Makkena-Kotiah and the Kakarla family of defendants 1 to 5 as soon as Kotiah and his mother entered that family to the effect that thenceforward the two families should become fused into a "composite" family, holding and enjoying the properties of both the families in common and that, at any eventual partition, Kotiah should have 1/4 share in the aggregate.

The other three shares, of course were intended for the three brothers, the 1st, 2nd and 4th defendants. It is the enforcement of this arrangement that is embodied in the first of the reliefs asked for by the plaintiff in the suit. In the alternative, she asks for at least the properties which her husband brought into the hotch-pot when moving into the Kakarla family after the partition, of 1918.

8. Plaintiff endeavoured to surmount the hurdle of the release given by her to the 2nd defendant under Ex. B-3 by pleading that she was a minor at the time, that she had no independent advice, her elder brother Anjiah being a simpleton and her younger brother Sesniah a very young lad, that she always stood in dread of the manager of the composite family, viz., the 2nd defendant Venkiah and had, perforce, to yield to his dictates and" take whatever he gave of his own choice. She treats the arrangement as totally void.

9. The trial Court disbelieved the version that Kotiah brought in C Schedule or that the 7th defendant Seshamma was allotted D schedule at the partition in 1918 and held that the theory of the "composite" family is all a myth. The conveyance Ex. B-2 and the release Ex. B-3 were upheld and the suit was dismissed.

10. Plaintiff preferred an appeal to the High. Court and the decision of the Subordinate Judge's Court was reversed and the suit decreed almost in terms of the first relief prayed for by the plaintiff. The learned Judge found that the partition was true that C and D schedules were taken by Kotiah and his mother, that both the families merged into a composite family and that the arrangement for giving Kotiah 1/4 share in the composite estate was proved. The validity of Ex. B-2 and B-3 was found against on the ground that the plaintiff was a minor at the time of taking B-2 and executing B-3.

11. Defendants 2 to 5 have now appealed. Before discussing the various points that arise for consideration it would be helpful to remind ourselves of the chronology of material events in this case.

1895 ... Kotiah's birth. 1918 ... Partition between Seshalah and Kotlah. 1930 ... 1st defendant separated From hts family. 1935 ... Kotlah married plaintiff.

1838 ... Kotiah died. 1938 ... Exa. B-2 and B-3 executed. 1947 ... Ex.A-2 executed between Seshalah and Venkiah.

12. The points for consideration are :

1. Did Kotiah and his mother get C and D Schedules at any partition in 1918?

2. (a) Did Makkena and Kakarla families merge and form into a composite family?

(b) Is the arrangement for giving Kotiah 1/4 of the total estate of the composite family true?

3. Are Exs. B-2 and B-3 valid and binding on the plaintiff? and

4. To what relief is plaintiff entitled?.

13. Point 1 : The learned advocate for the appellants concedes that, despite the contention to the contrary earlier. C and D schedules may be taken as allotted to Kotiah and his mother at the partition of 1918. In the written statement as well as at the trial in the Subordinate Judge's Court, Bapatla, the Kakarla family maintained that Kotiah and his mother brought nothing into their family and that they came over in an impecunious state and were being maintained out of compassion and in view of their being close relations.

Even at the hearing before Viswanatha Sastry, J., the same contention was stressed. There was a total denial that the C schedule ever belonged to the Makkena family. Equally emphatic was the assertion that the Makkena family never owned the D schedule lands too at any time. There is an elaborate discussion by Viswanatha Sastry, J. of this question.

All further consideration of this aspect has been obviated by the admission of the learned advocate of the appellants that plaintiffs case in respect of these two schedules may be taken as correct. We, therefore, hold that when Kotiah and his mother moved into the Kakarla family, Kotiah had absolute title to C schedule and a remainder in 1/2 of D schedule, while his mother had a life interest in the entirety of D schedule.

14. Point 2: The learned Judge believed the plaintiff's theory about the formation of the composite family and the arrangement in regard to the one-fourth share, reversing the finding of the trial Court. There is, of course, no document evidencing either of the aspects. A consideration of the oral evidence and the probabilities compels us to differ from the learned Judge. In fact, Viswanatha Sastry, J., recognises the paucity of evidence in this behalf. Only two witnesses speak about the arrangement, i.e., P.Ws. 1 and 2. P. W. 1 Rajiah claims to have known about the partition when Kotian was 20 years old and Kotiah and his mother taking C and D schedules to the Kakarla family. All that he can say in regard to the formation of the composite family or the promise of 1/4 share to Kotian is confined to Ms cryptic statement :

"Kotiah took his properties to family of defendants 1, 2 and 4, when he joined it.

They agreed to divide all properties into four shares when separating.'"

P. W. 2 Kakarla Seshiah knows Kotiah and his brother Seshiah D-6 and the Partition. Kotiah got a house site at the division and the witness vouches for the fact that on the said site he and the Kakarla family jointly constructed a house and that they were jointly cultivating all the lands. In regard to the arrangement for the 1/4 share all that he says is :

"They also agreed that Kotiah and defendants 1, 2 and 4 should each be entitled to 1/4 share in all lands owned and to be acquired later. Defendant 2 was managing. Kotiah was not such a capable man. From that time Kotiah was living with them along with defendant 7."

Questioned as to the time when the arrangement for the 1/4 share was made, the witness would have it ;

"Soon after partition defendant 7 and Kotiah went to house of defendants 1, 2 and 4. Then in the bazaar where villagers meet they agreed about enjoying lands in four equal shares. Myself and P. W. 1 were present then. No other villager was present then."

15. The learned Judge remarks about the bazaar arrangement thus:

"This is rather strange if the evidence of the witness is to be taken literally This is all the direct evidence relating to the partition effected between Seshayya and Kotayya and the formation of the composite family of Kotayya and defendants 1, 2 and 4."

It is obvious that the learned Judge was not prepared to give credence to the talk in the bazaar and felt that the evidence was too meagre to justify a finding in favour of the plaintiff. Yet a charitable construction was attempted to be placed on the "strange" version of P.W.2 with the remark that:

"Perhaps what is meant was that in the bazaar defendants 1, 2 and 4 and Kotiah talked about the "arrangement in the presence of P.W.1 and himself."

We find ourselves unable to give credence to the statements of P.Ws. 1 and 2 that there was any express contract between the two families, either in favour of a merger into a composite family or an allotment of 1/4 share. For one thing, we have it clearly in evidence that Kotiah was of immature years at that time.

He was hardly 20 years old. Even according to P.W.1 he was not of an intelligent type too. What seems to have prompted his mother to move into her daughter's house taking the boy with her, must have been the incapacity and the immaturity of the boy to run the family independently and manage the newly secured properties. The evidence of the 2nd defendant himself is that Kotiah was not even participating in the actual cultivation of the lands. He was merely allotted the easier task of tending cattle and cutting grass. Indeed, his mother would have found no necessity to take shelter in a daughter's house if she could rely upon this younger son of hers to manage a family.

Apart from it, the 1st and the 2nd defendants were very much senior to him in age and if there was any overt arrangement between the two families it is the mother Sesharmma who should have taken the lead in bringing it about, but none of the witnesses for the plaintiff speaks to her participation in the talks about the formation of a composite family or the terms of merger.

16. While, P.W.I furnishes no details of the time, place or occasion for the express contract, P.W.2 gives the incredible version that in the open bazaar where villagers meet the contract was entered into between the two families. When Se-shamma, after a quarrel with the daughter-in-law came over and took shelter in her daughter's house, the time was hardly propitious for a formal contract. There was in fact, no need for discussing a merger or its terms. We can follow the logic if the argument is that one or more members of the Kakarla family protested against the entry of Kotiah into their midst or that there were differences between Kotiah and his mother regarding the desirability of moving into Kakarla family and that a conciliation was effected on certain terms discussed and agreed upon. Nothing of the kind happened. The theory of an express contract for the formation, of a composite family may, therefore, be rejected.

17. In the absence of an express agreement, the formation of a composite family cannot ordinarily be inferred from the mere circumstances of two different families living together and cultivating jointly, unless the conduct and mutual relations of the component units are wholly incompatible with the preservation of their individuality.

A long duration, say, the passing of a few generations of common living may, in itself, raise a presumption of merger sometimes. But in this case jointness lasted hardly for 2 decades. It was confined to the period between the partition in the Makkena family in 1918 and the death of Kotiah in 1938. We have no precise evidence as to the year in which Kotiah and his mother came into the Kakarla family. Even if it were in 1918, the stay with the Kakarlas was not for more than 20 years.

There is not even the indication that Kotiah participated in joint cultivation of the lands. We have the definite statement of the 2nd defendant that he was merely grazing cattle and cutting grass. The lands were being managed by the Kakarlas themselves. Kotiah's lands (C schedule) were managed by them on his behalf just as Seshamma's (7th defendant's) D schedule lands were cultivated on her behalf. Again, a continuous course of dealings with the properties of the quondam units for the common benefit of the family, or acquisitions jointly in the names of all the members of a common bend and the launching of joint ventures, of the shouldering of common risks and the utilisation of the resources of the units indiscriminately for the purpose of the whole family would be some of the indicia of a merger.

18. In the present case no doubt jointness of cultivation of the lands of the

Kakarla and Makkena families and a common enjoyment of the income may easily be presumed. But this circumstance is attributable to the fact of a joint living of the two families and can signify nothing more.

It is the dealing with the corpus which gives us a clue to the real intention of the parties and we have not been shown any instance where Kotiah alienated or otherwise dealt with the properties of the Kakarlas or vice versa in a manner calculated to prove that both the units deemed it immaterial as to which of the properties and whose properties were actually alienated and the purpose for which that was done.

19. We have no other index of a composite family in this case and the plaintiff and her advisers being conscious of this limitation have been at their wits' end in devising ways of proving the formation of a composite family and the promise of a 1/4 share. They have attempted to prove it in two ways :

(A) One is the plea that the 1st defendant, who was the eldest member of the Kakarla family and who married Kotiah's sister Peramma, separated himself from the family taking precisely 1/4 share of the aggregate properties of the composite family.

(B) The other is the discovery of an explicit admission in a document Ex. A-2.

A : 1st defendant's 1/4 share: The attempt is to probabilise the version that each member of the composite family had a right to a 1/4 share. The Kakarlas were only three sharers and the fourth must necessarily be Kotiah. But the evidence that 1st defendant took a 1/4 share is most unreliable.

20. First of all the 1st defendant has not gone into the witness box. He is the son-in-law of Seshamma. Having become divided in 1930 he has no longer an interest in supporting his brothers, the 2nd and 4th defendants, in a false contest. Yet we find him making common cause with his brothers and filing a common written statement with them.

21. Secondly, the evidence of the plaintiff's witnesses that he took 1/4 out of the entire composite estate is given only by P.Ws. 1, 3 and 8 and their evidence can hardly be believed.

22. P.W. 1 is Kakarla Rajiah and is obviously interested in them. His statement that the two families agreed to divide all the properties into four shares was already disbelieved and his further claim to know that the 1st defendant separated himself taking a 1/4 share is less convincing. All that he knows is that the 1st defendant took about 2 1/2 gonus i.e., 7.8 acres. He does not tell us how the calculations were made, what the total extent of the composite properties was and what items were comprised in the 2 1/2 gorus. The witness does not seem to know anything personally about the allotment of the lands to the 1st defendant.

23. P. W. 3 Nuthalapati Lakshmaiah, is a clear partisan of the plaintiff. It would

suffice if we notice that his version of the 1st defendant taking $\frac{1}{4}$ share is directly falsified by his own admission that the family of defendants 1 to 5 owned 11 gorrus. Adding to this the two gorrus of Kotiah it would be 13. The 1st defendant, if the witnesses are speaking the truth, should have got $3\frac{1}{2}$ gorrus. The witness admits that he had no special means of knowing personally about the allotment of a precise fraction of $\frac{1}{4}$.

He would say that the family owned 11 gorrus then, He is obviously referring to the aggregate owned by the two families. He does not speak to any composite family owning the 11 gorrus and the context in which he speaks renders probable his intention to attribute the 11 gorrus only to the Kakarla family as distinct from Kotiah's properties of 2 gorrus.

24. As against this version, the contesting defendants have been maintaining consistently that the 1st defendant took only $\frac{1}{3}$ of their own family estate. Their suggestion is that the Kakarla family which, according to them, never became merged with the Makkena, was owning about 30 acres and the 1st defendant got for his share $\frac{1}{3}$ of it.

We have endeavoured to work out arithmetically the ratio of the properties taken by the 1st defendant to the residue so as to ascertain whether the fraction inclines towards $\frac{1}{4}$ of the aggregate of the two family properties as contended by the plaintiff or approximates to $\frac{1}{3}$ of the exclusive properties of the Kakarla family. The result sup-ports the defendant. In making the calculations we have excluded the properties of the B schedule. There was some controversy between the two parties as to when those items were acquired.

It is admitted by both that they are accretions to the properties owned by the two families. There is no evidence in regard to the time of acquisition of the B schedule but we have the admission in the description of the properties in the B schedule annexed to the plaint that they were all "acquired subsequent to Kakarla Subbaiah's (1st defendant's) separation." It means that in the process of the-allotment of the 1st defendant's share, "B" schedule never figured at all.

25. The Kakarla family owned at that time 20.18 acres (Schedule A minus Schedule C). If the 1st defendant took 10 acres and left 20 acres for the shares of his brothers, viz., the 2nd and the 4th defendants, the version is in perfect consonance with the defence theory that there was absolutely no merger and that what was dealt with at the partition was only the property owned by the Kakarla family. We may notice that the 2nd defendant was never cross-examined with reference to the affirmation that the 1st defendant took 10 acres from the family properties.

26. The endeavour of the plaintiff's witnesses in saying In at the 1st defendant took only $2\frac{1}{2}$ gorrus i.e., 7.8 acres, is just to make it appear that this figure represents $\frac{1}{4}$ of the total extent owned by the composite family, which they plausibly Suggest is the aggregate of A plus B schedules i.e., about 30 acres.

27. The fallacy of the suggestion would be patent from an analysis of the schedules. Kakarla family owned before 1st defendant's separation. Ac. Ac.

(i) Ac. 20. 23

(ii) " 7 28. 03

Kotiah brought in C schedule. 5. 50

7th defendant brought D schedule. 2. 58

Acquisition after 1st defendant's separation "B Schedule. 6. 62

Note: "A" schedule is the aggregate of (i) above and C schedule. 25. 73.

The plaintiffs contention is that the lands belong ing to the composite family, apart from 7th defendant's items, just before the 1st defendant's separation, were comprised in Schedules C, B and items (i) and (ii) above and that 2 1/2 gorrus or Ac. 7.8 taken by the 1st defendant comes to 1/4. That could hardly be because the total comes to Ac. 40.15 and 1/4 of it would be much more than Ac. 7.8.

We find, however, that B schedule was acquired only subsequent to 1st defendant's separation. There is an admission in this behalf in the heading of the P schedule itself furnished with the plaint as already noticed. Excluding this schedule the total available for division comes to Ac. 33.53. Even then Ac. 7.8 is less than 1/4

On the other hand the defendants' stand of non merger of families gains countenance on the data furnished by the 2nd defendant as D.W.2. It may be recalled that his evidence is that the 1st defendant took 10 acres. It works out at 1/3 of the aggregate which Kakarla family owned as its own property at the time of partition, viz., item (i) Ac. 20.25 plus 10.00 taken by the 1st defendant, totalling Ac. 30.23.

28. There is, however, one element which apparently stands out of alignment of the defendants' case. It is that the 1st defendant at the partition took items 4,5 and 8 of C schedule which had been brought into the Kakarla family by Kotiah. Plaintiff may plausibly urge that when the 1st defendant took a share of what had originally belonged to Kotiah the presumption is that Kotiah's properties had become fused with the Kakarla's.

But the allotment of the said 3 items totalling. 1.70 acres in extent to the 1st defendant can easily be explained. It is precisely 1/3 of B schedule. When he was allotted 1/3 of what the Kakarlas had, possessed as their own property, in all likelihood, there must have been a discussion as to what should-, be done with Kotiah's property and who should be in management, Kotiah himself being incapable of looking after his own affairs. The 1st defendant would not allow his brothers to be in possession of the entire B schedule nor would the brothers allow him to take the same under his management.

An equitable arrangement seems to have been, made that even B schedule lands of Kotiah should. be split up in the same ratio as the personal properties of the Kakarlas and 1/3 put in the possession of the 1st defendant for being managed on behalf of Kotiah. That, perhaps, accounts for the divergence of versions between the plaintiffs witnesses-and die 2nd defendant's as regards the extent taken by the 1st defendant. 2 1/2 gorrus i.e., 7.8 acres spoken to by the plaintiffs witnesses plus 1.70 acres, out of B schedule would yield a total of 9.5 acres or roughly 10 acres as spoken to by the 2nd defendant. The theory, therefore, of the 1st defendant, taking 1/4 of the aggregate of the properties on the footing that they belonged to a composite family is unsustainable.

29. (B) Ex. A-2 : The other factor which plaintiff stresses is an admission said to have been made by the 2nd defendant in a document executed by him and the 6th defendant Seshiah (Kotiah's brother) dividing the properties of D schedule. It may be remembered that the partition in 1918 between the 6th defendant and Kotiah of their own family prnaerties --D schedule --was set apart for their mother's enjoyment for her lifetime with a remainder in favour of the sons to be shared equally on her death. Plaintiff would have us believe that in 1947, long after Kotiah was dead, the mother surrendered her life interest and enabled her surviving son the 6th defendant and the surviving head of the quondam composite family, viz., the 2nd defendant to share Use D schedule equally. The document bears undoubtedly the thumb impressions of the 2nd and the 6th defendants. A finger print Expert P.W.9, certifies to it. It embodies all the necessary recitals in support of plaintiff's case. Particular stress is laid on the use of the expression "Samishti kutumbam" occurring therein. The words mean a joint or composite family. When confronted with this document, the 2nd defendant would disown all knowledge of the contents.

He would say that a fraud has been played on him by one Sambiah, a member of the fraternity" of law-touts generally called "Privates," who make themselves so indispensable to rustic litigants. It appears he was looking after some other litigation of the 2nd defendant in the course of which he had" taken a number of blank sheets with the party's thumb impressions. He presumes that one of those sheets must have been pressed into service for engrossing a document which would suit the plaintiffs purpose. There is ample evidence testifying to Sambiah's interest in the 2nd defendant.

That he was in charge of 2nd defendant's litigation admits of no doubt. Viswanatha Sastry, J., however would not believe that the 2nd defendant" would ever have allowed blank papers with his thumb impressions to be in the custody of a law-tout. But it is not infrequently that parties themselves place at the disposal of lawyers and assistants blank sheets with the signatures or thumb impressions for use in case of emergency.

When an urgent affidavit or counter has to be filed there is the express or implied authority to the custodian or those sheets to engross suitable contents on the blank sheets. Nevertheless we should have felt hesitant to act upon the

existence of such a practice for discrediting the genuineness of A-2 had it not been for the intrinsic evidence which the document itself affords against its own genuineness. The learned Subordinate Judge has rightly emphasised the significance of the effort to squeeze in a line at the end of the document above the thumb impression so as to make the document complete.

A sure index of fabrication is the lack of uniformity in spacing the lines of writing so patent in Ex. A-2. The line spaces towards the end of the document are definitely narrower. While no explanation is forthcoming on the side of the plaintiff to explain these significant features we have the glaring factor that the first line of writing almost reaches the top edge of the paper. If the document was written in the usual course, one would have expected the scribe to leave a decent margin at the top. Hardly a few millimetres of space is found. The nervous anxiety of the scribe to economise space for introducing all the matter placed at his disposal above ten thumb impressions is sufficiently manifest.

A glance at this unregistered sheet of paper suffices to brand it as a fake. It has been fabricated to outwit the wily 2nd defendant who cheated the plaintiff and it is now the turn of the plaintiff's advisers to reciprocate. We are satisfied that Ex. A-2 is a fabrication and no recital therein can be relied upon in proof of the formation of the composite family or any other material circumstances of the case.

30. Point 3: Plaintiff imputes fraud to the 2nd defendant when he purported to make a gift under Ex. B-2 of 1.72 1/2 acres of land to the helpless plaintiff and her infant daughter soon after the death of Kotiah in 1938. The document recites that in view of Kotiah and the plaintiff possessing no property and depending on the Kakarla family for maintenance and as he died leaving his widow the plaintiff and daughter 8 years old destitute, he, the 2nd defendant, prompted by affection was providing for their maintenance by making an ex-gratia grant of 1.72 1/2 acres and a payment of Rs. 400/-. This was in 1947. At the same time he took a release, Ex. B-3 from the plaintiff of all her claims.

31. There can be the least doubt that the two documents Exs. B-2 and B-3 are ab initio void. While the 1st defendant was one of the parties to the document, the other party was the plaintiff who was then a minor. As P. W. 7 her evidence is that she was 15 years old at the time of marriage. By "fifteen" in the language of the witness is meant that the 15th year was running. In other words she had completed only 14 years of age.

The 2nd defendant definitely concedes that she was only 14 or 15 years old then, Plaintiff needs no further ground (or avoiding the documents than this explicit admission of her adversary. She was eo nomine a party to the documents. She was undoubtedly a minor. The documents are totally void and of no effect.

32. Even assuming that she had completed her 18 years and thus attained majority, the circumstances under which the two documents were executed are such as would raise a strong presumption of fraudulent concealment of material

facts from her knowledge. The 2nd defendant pretended then, as in the present litigation, till his Teamed advocate made an admission to the contrary in the arguments before us, that Kotiah brought no property at all with him when he came to live with the Kakarla family.

It is on such a misrepresentation that the plaintiff and persons interested in her were induced to acquiesce in a dolo of 1.721/2 acres and Rs. 400 in full settlement of her claims. She had no independent advice. Her brother Anjian is a man of low intelligence and hardly capable of putting up a fight against the redoubtable 2nd defendant of whom plaintiff was always in fear. The girl had become a widow recently, had an infant to bring up and with the limited help of an inept brother and at such an immature age she could hardly stand up against the 2nd defendant and vindicate her rights.

She had the further handicap that the only person who knew intimately the truth of all things which touched the two families viz., her mother-in-law (7th defendant) was in the camp of the 2nd defendant. In such a helpless condition the plaintiff was made to subscribe to the document B-3 and acquiesce in Ex. B-2. It need hardly be said that the two documents are, at any rate, voidable at her option and are not binding on her. She is free to ignore the documents altogether.

33. Of the two alternative reliefs prayed for in the plaint, that which is based on the theory of composite family and the 1/4 share has to be rejected. She has the alternative prayer that the properties of the C schedule which Kotiah had brought into the family and a half of D schedule may be given to her. To these she is undoubtedly entitled. Then remains the question as to what should be done with the acquisitions made with the income of both sets of properties. Those items are set out in Schedule B.

They are of the extent of 6.62 acres. There can certainly be no denial that both the Makkenas' and Kakarlas' properties have contributed to the acquisitions. An equitable course to adopt in dealing with this schedule is to divide the items therein between plaintiff on the one hand and defendants 2 to 5 on the other in the ratio of the respective properties which contributed to the acquisitions, that is (5.5 plus 1.29) 20.18. A question has been raised as to whether the plaintiff ought not to be allowed to retain a portion of the properties covered by Ex. B-2, but that contention presupposes that these properties were of the category of B schedule i.e., later acquisitions made from the joint family properties.

There is no evidence in this behalf on the side of the plaintiff. If these properties however had belonged to the Kakarla family from the inception they may have to be taken into account in working out the denominator in the fraction aforesaid. But the defendants too have adduced no evidence in this behalf. In this state, the only course open to us is to let the fraction remain undisturbed.

The extent which has thus to be vouchsafed to the plaintiff comes to ac. 1.8. Inasmuch as the two prayers in the plaint can be construed only as indicating the

maximum and minimum limits of plaintiffs claim, we deem it just and equitable to allot to the plaintiff not only C schedule and a half of D schedule but also a fraction i.e., ac. 18 of B schedule. This allotment, however, will be subject to the condition that the plaintiff should surrender the lands which she got under Ex. B-2. The sum of Rs. 400/- said to have been paid under the recitals of B-2 never found its way into the hands of the plaintiff. It was paid to her brother it appears.

What he did with that money, nobody knows. That amount presumably came out of the sum of Rs. 4200/- which the two families possessed at the time of 1st defendant's separation, Plaintiff is not bound to make good that sum. It would suffice if she surrenders possession of the items of Ex. B-2 and it is hereby declared that defendants 2 to 5 will become entitled to the said items on their delivering possession of C schedule and a half of D schedule too, as the 7th defendant is no more.

If any of the items covered by Ex. B-2 are not now in the possession of the plaintiff and cannot be delivered to defendants 2 to 5, an equivalent thereto shall be delivered to them from and out of her items of 8 and C schedules as the Subordinate Judge's Court may determine on the report of a Commissioner.

34. The judgment and decree of Viswanatha Sastry, J. is thus modified. A commissioner will be appointed to effect a division of D schedule and B Schedule and to deliver to the plaintiff a half "of B Schedule and ac. 1.8 of B Schedule.

35. As plaintiff-respondent has succeeded in a substantial measure she will have her costs from the appellants.