
(2016) 04 AP CK 0040
In the Andhra Pradesh High Court
Case No : Appeal Suit No. 373 of 2011

M. Vidyasagar Reddy and 6 others	Vs	APPELLANT
M. Padmamma and 3 others		RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Citation : (2016) 4 ALT 95 : (2016) 4 AndhLD 775 : (2016) 3 HLR 169

Hon'ble Judges : Nooty Ramamohana Rao and Anis, JJ.

Bench : Division Bench

Advocate : Sri D. Prakash Reddy, Advocate, for the Appellant; Sri S. Niranjan Reddy, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—This appeal is preferred under Section 96 of Code of Civil Procedure by defendant Nos. 2 to 7 & 9 in suit O.S.No. 85 of 2003 on the file of III Additional District Judge (FTC), Ranga Reddy District at L.B.Nagar, aggrieved by the decree and judgment passed therein.

2. Respondent Nos. 1 and 2 herein are the plaintiffs in the suit. The 3rd respondent herein was the 1st defendant in the suit while the 4th respondent is the 8th defendant in the suit. The two plaintiffs instituted the suit seeking partition and separate possession of the plaintiffs 11/50th share out of the suit schedule property.

3. It is the case of the plaintiffs that they and the defendants are members of Joint Hindu Undivided Family and that Sri Methukupalli Yella Reddy was their common ancestor and that Sri Yella Reddy was having three sons namely M. Mohan Reddy, M. Janga Reddy and M. Bal Reddy. The plaintiffs are the wife and daughter of late Sri M.Janga Reddy. The 8th defendant is also the son of the 1st plaintiff and late Janga Reddy. The 1st defendant in the suit is Sri M. Bal Reddy, the only surviving son of late Sri M. Yella Reddy, the common ancestor. Defendant Nos. 2 to 7 are the children of late Sri M. Mohan Reddy while 9th

defendant is the wife of late Sri Mohan Reddy.

4. It is the case of the plaintiffs that lands situate in survey Nos. 2/5 admeasuring Ac.2-39 guntas, Ac.20-00 guntas of land in survey No. 10, Ac.1-20 guntas of land in survey No. 11 and the land admeasuring Ac.6-03 guntas in survey No.13/A at Pocharam Village, Ghatkesar Mandal, Ranga Reddy District are not subjected to any partition and they are owned and possessed by the Hindu Undivided Joint Family. But, however, the plaintiffs and defendants are in possession of the suit schedule property as per their convenience. It is also the specific case that the children of late Mohan Reddy, defendant Nos. 2 to 7, tried to alienate the suit schedule properties ignoring the demand of the plaintiffs to partition the same by meets and bounds. After Sri M. Janga Reddy, the younger brother of Sri Mohan Reddy died, several requests have been made to partition the properties and to put each one in separate possession of their shares respectively and since those requests have been ignored, the suit for partition is instituted.

5. The suit schedule has been subsequently amended by substituting the extent of land in survey No.11 as Ac.6-20 guntas instead of Ac.1-20 guntas as was initially noted in the schedule of property in the plaint. One more extent of land Ac.2-00 guntas lying in survey No.12 was also added to the suit schedule property, thus, making the total extent of land as Ac.37.22 guntas.

6. The 2nd defendant has filed a detailed written statement. The relationship between the parties was not disputed and that late Sri M.Yella Reddy was the common ancestor of the parties was not disputed. However, it was denied that the plaintiffs and the defendants are continued as members of Joint Hindu Undivided Family. It is the assertion of the 2nd defendant that there was partition in the family and accordingly, a settlement was worked out way back in the year 1980 between the 3 sons of late Sri M. Yella Reddy namely M. Mohan Reddy, M. Janga Reddy and M. Bal Reddy. After the partition is effected a family settlement deed dated 24.02.1980 was worked out in which the following lands are allotted to the shares of plaintiffs and defendants branches:

(a) The late M.Mohan Reddy branch i.e., the father of defendant No. 2 to 7 were allotted the lands in Sy.No. 10 extent Ac.20.00 gts, Sy.No. 11 extent Ac.6.20 gts, Sy.No. 13 extent Ac.6.00 gts.

(b) The late M.Janga Reddy branch i.e., the father of Plaintiff No. 2, defendant No. 8 and husband of plaintiff No. 1 were allotted the lands in Sy.No. 50 extent Ac.20.00 gts, Sy.No. 18 extent Ac.10.30 gts and a new house at Pocharam Village, Ghatkesar Mandal, R.R. District.

(c) The Defendant No. 1 (M.Bal Reddy) was allotted the lands in Sy.No. 50 extent of Ac.40.00 gts and an old house at Pocharam Village, Ghatkesar Mandal, R.R. District.

7. In Para 5 of the written statement, the 2nd defendant has specifically asserted

that pursuant to the partition and the family settlement worked out on 24.02.1980, the lands in survey Nos. 50 and 18, which have fallen to the share of Sri M. Janga Reddy have been sold away to third parties. It is specifically asserted therein that land of an extent of Ac.2-20 guntas in survey No.18, out of total extent of Ac.10.30 guntas, which fell to the share of Sri Janga Reddy, was sold to Smt. G.Aruna, W/o Pratap Reddy through a registered sale deed bearing document No. 2680 of 1997 dated 01.10.1997. Again land of extent of Ac.0-20 guntas was sold by Sri M. Janga Reddy in favour of Dr. Nand Kumar Murari and his wife Dr. Usha Rani through a registered sale deed bearing document No. 1604 of 1998 dated 01.07.1998. Again an extent of Ac.0-20 guntas in survey No. 18 was sold to Dr. K. Kumar Harnath and Dr. Asha Rani through registered sale deed bearing document No.1605 of 1998 on 01.07.1998. Further an extent of Ac.0-16 guntas in survey No. 18 was sold by plaintiff No. 1 to one Sri B. Prabakar Reddy through registered sale deed bearing document No. 2850 of 2003 dated 17.03.2003, few days before institution of the suit. The 8th defendant in the suit who is none other than the son of late M. Janga Reddy and the 1st plaintiff sold an extent of Ac.0-02 guntas through registered sale deed bearing document No. 6000 of 2003 dated 05.06.2003 in favour of one B. Venkatesh Goud. This sale transaction was carried out by defendant No. 8 after filing the present suit. Further an extent of Ac.0-10 guntas in survey No.18 was sold by plaintiff No. 1 to one Sri B. Prabakar Reddy through registered sale deed bearing document No. 3599 of 2003 dated 25.03.2003. These sale transactions apart, it has come to the Knowledge of defendant Nos. 2 to 7 that the plaintiffs and defendant No.8 sold land of an extent of Ac.4-00 guntas in survey No. 18 to one Sri A. Narasimha Reddy long back and pursuant to the said sale name of Sri A. Narasimha Reddy was mutated in the revenue records. The defendants have also further come to know that the remaining land in survey No. 18 was also sold away by the plaintiffs and defendant No. 8 to various third parties and thus, they have sold away the entire extent of Ac.10-30 guntas situated in survey No.18 which fell to the share of M. Janga Reddy, the principal of the plaintiffs and defendant No.8.

8. The land of an extent of Ac.20-00 guntas in survey No.50 was also sold off. In fact, Sri M. Janga Reddy, father of plaintiff No.2 and defendant No. 8 and the husband of plaintiff No.1, during his lifetime sold the entire extent of Ac.20-00 guntas in survey No.50 to Andhra Pradesh Housing Board through a registered sale deed bearing document No. 6565/1982 dated 13.08.1982. The entire sale consideration amount was paid by the Andhra Pradesh Housing Board to Sri M.Janga Reddy through an account payee cheque bearing No.453139 dated 10.08.1982 drawn in a sum of Rs. 2,34,600/-. While executing the sale deed bearing document No. 6565/1982 on 13.08.1982, Sri M. Mohan Reddy, the father of defendant Nos. 2 to 7, was also shown as one of the vendors, formally, along with Sri M. Janga Reddy. Though Sri Mohan Reddy was shown as a covendor along with Sri Janga Reddy, the entire sale consideration was received by Sri M. Janga Reddy only as referred to supra.

9. It is also the specific assertion of the 2nd defendant that land of extent of Ac.40-00 guntas lying in survey No.50 was allotted to the share of 1st defendant, the younger brother of both Sri Mohan Reddy and Janga Reddy. In view of the partition in the family, the 1st defendant has also sold the entire Ac.40-00 guntas lying in survey No. 50 to the same Andhra Pradesh Housing Board and he received sale consideration of Rs. 4,69,200/- through an account payee cheque bearing No. 453138 dated 10.08.1982.

10. The 2nd defendant has also asserted that land of Ac.20-00 guntas in survey No. 10 and land of an extent Ac.6-03 guntas in survey No.13/A has fallen to the share of M. Mohan Reddy and hence, it is defendant Nos. 2 to 7 and defendant No. 9, who is the wife of late Mohan Reddy, became the absolute owners and possessors of these lands and their ownership and possession was also reflected in the revenue records and also pattadar passbooks and title deeds were issued over these lands to Sri Mohan Reddy. Hence, over these lands of Ac.26-03 guntas in all, plaintiff Nos.1 and 2, defendant No.8 and the 1st defendant have nothing to do in any manner, as they have no right.

11. It is also asserted that out of Ac.6-20 guntas in survey No.11 fallen to the share of Sri Mohan Reddy, land of extent of Ac.3-00 was sold to third parties and the remaining extent of Ac.3-20 guntas is in their possession exclusively. Over this land also neither the plaintiffs and defendant No.8 nor the 1st defendant have any right in any manner. Further, out of total extent of land Ac.6-03 guntas lying in survey No. 13/A, which fell to the share of Sri Mohan Reddy, land of extent of Ac.2-00 has been acquired by the AP Housing Board for laying an approach road to Singapore Residential Complex undertaken by the said "Andhra Pradesh Housing Board". Compensation was accordingly paid to them.

12. In the above background the all important question which is required to be resolved is whether there was partition between the predecessors-in-interest of the plaintiffs and defendant No. 8 on one hand and defendant Nos. 1, 2 to 7 & 9 on the other and as to whether defendant Nos. 2 to 7 & 9 exclusively own the suit schedule properties.

13. In support of their claim the plaintiffs examined PWs.1 to 5 and got marked Exs.A1 to A31. The defendants examined DWs.1 and 2 and got marked Exs.B1 to B16. The 1st plaintiff examined herself as PW.1 while her son-in-law was examined as PW.2. PWs.3 to 5 are examined in support of the plea that the suit schedule properties belong to ancestors of the parties and that they are jointly owned by the plaintiffs and the defendants. Exs.A1 to A6, A14 and A22 to A26 are pahanies while Ex.A7 is a valuation certificate and Exs.A8 to A10 are receipts. Exs.A11 and A12 are certified copies of the sale deeds and Ex.A13 is the death certificate of the husband of the 1st plaintiff/PW.1. Ex.A17 to 20 are gift settlement deeds, Ex.A21 is a certified copy of the sale deed bearing document No. 8237/1980. Ex.A27 is a true copy of declaration in form No. 1 filed under the Land Ceiling Act. Ex.A28 is a similar form and declaration in form No. 1 under Land Ceiling Act by Mr. Malla Reddy. Ex.A29 is copy of the proceedings of

Land Reforms Tribunal, Hyderabad East Division. Ex.A30 is the certified copy of the sale deed while Ex.A31 is the certified copy of the General Power of Attorney.

14. The 4th defendant in the suit has examined himself as DW.1. The 1st defendant in the suit is examined as DW.2. Through DW.1, Ex.B1-title deed, Ex.B2-pattadar passbook and Exs.B3 to B5 pahanis and Exs.B6 to B12 certified copies of the sale deeds and Exs.B13 and 14 copies of the affidavits filed before the Land Reforms Tribunal and Ex.B15 the certified copy of the award and Ex.B16, the original family settlement deed, are got marked.

15. As rightly contended by Sri S. Niranjan Reddy, learned counsel for the respondents/plaintiffs that the burden lies heavily on the person who having admitted the relationship amongst the parties and also having admitted that the parties are members of Hindu Joint Family at one stage but subsequently got divided and separated, to establish such separation. Sri Niranjan Reddy placed reliance in support of the above plea upon the principle enunciated in Para 17 of the judgment rendered by the Supreme Court in *Chinthamani Ammal v. Nandagopal Gounder and Another*, (2007) 4 SCC 163, which is as following:

"In law there exists a presumption in regard to the continuance of a joint family. The party who raises a plea of partition is to prove the same. Even separate possession of portion of the property by the co-sharers itself would not lead to a presumption of partition. Several other factors are required to be considered therefor."

16. Therefore, at the very outset it has to be examined whether defendant Nos. 2 to 7 & 9 have discharged this burden at all.

17. For convenience the genealogy of the family is traced out:

18. The Senior Bal Reddy had two sons Yella Reddy and Malla Reddy. They have inherited vast extents of landed property nearly in equal measure. It is important to note that in survey No. 50 alone Senior Bal Reddy owned 120 acres of land. Hence, 60 acres fell to Yella Reddy's share and 60 acres fell to Malla Reddy's share in survey No. 50 alone. The case of the defendants, who represent late Mohan Reddy's Branch, is that this 60 acres of land inherited by Yella Reddy in survey No.50 has in turn fallen to the share of Janga Reddy and Bal Reddy to the extent of Ac.20.00 and Ac.40.00 guntas respectively. Ex.A31 is a copy of document bearing No. 78/1982, a General Power of Attorney executed on 02.05.1982 between Senior Malla Reddy, the brother of Yella Reddy and son of Bal Reddy, M. Mohan Reddy, who is the predecessor-in-interest and title of defendant Nos.2 to 7 & 9, M.Janga Reddy who is predecessor in interest and title of plaintiffs and D8 and M.Bal Reddy (Junior) son of Yella Reddy. Sri M venkat Reddy S/o M. Malla Reddy (Senior) is also an executant to Ex.A-31. Thus, Ex.A31 is executed by all the 3 sons of Yella Reddy namely Mohan Reddy, Janga Reddy and Bal Reddy (Junior) together with their junior paternal uncle M. Malla Reddy (senior). In this document they have described that the family owns land approximately of 102 acres in survey No.50 of Pocharam Village and since the

executant's are not in a position to do necessary acts to dispose of the said lands, they constituted 4 individuals as their General Power of Attorney holders to negotiate, bargain and enter into agreement of sale with any third parties and to attend to the rest of the works connected therewith. Ex.B6 is a copy of a registered sale deed bearing document No.6565/1982. This sale deed is executed on 13.08.1982 by the aforementioned M. Malla Reddy (senior), Mohan Reddy, M. Venkat Reddy S/o Malla Reddy (senior), M. Janga Reddy and M. Bal Reddy in favour of A.P. Housing Board represented by its Vice Chairman and Housing Commissioner. They have agreed to sell the entire 102 acres of land situated in survey No. 50 @ Rs. 23,000/- per acre and hence, received a total sale consideration of Rs. 23,46,000/- for alienating entire 102 acres of land lying in survey No.50. Ex.B6 sale deed bearing document No.6565/1982 does not refer to any partition amongst the 3 sons of Yella Reddy namely Mohan Reddy, Janga Reddy and Bal Reddy though it was executed a little more than 2 years after the alleged partition dated 24.02.1980. Hence, Ex.A31 read with Ex.B6, probablizes that the theory of partition affected on 24.02.1980 may not be true.

19. Ex.B16 is stated to have been executed on 24.02.1980, its opening recitals read as under:

VERNACULAR MATTER

20. When translated, roughly, it means that in the context of partition of our immovable properties on 24.02.1980, Sunday, when we have divided our immovable properties the following document is prepared. The names of all three brothers, Mohan Reddy, Janga Reddy and Bal Reddy were mentioned and thereafter the following sentence is recorded:

VERNACULAR MATTER

21. When translated it reads as under:

22. The following items are arranged amongst the three of us for enjoyment and hence, this document.

23. The above recitals of Ex.B-16 merely record the partition that has taken place on 24.02.1980, Sunday. The 3 brothers have partitioned their immovable properties. In that context, they have prepared the list of properties which have fallen to the respective shares. No doubt this document is received in evidence and marked as Ex.B16, but however, Sri Niranjan Reddy has pointed out that it being a deed of partition requires compulsory registration under Section 17 of the Registration Act and that having not been done it is totally inadmissible in evidence. Learned counsel has placed reliance upon the judgment rendered by the Supreme Court in R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Another (2003) 8 SCC 752, which reads as under:

"The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not

dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit."

24. There is no serious dispute on the proposition of law that if the document is a deed of partition by which rights and interests are created amongst the respective sharers, there is no alternative except to get the document registered in accordance with and in terms of Section 17 of the Registration Act. If on the other hand the document Ex.B16 only represents the arrangement by way of convenience for more efficient usage of the properties that fell to the respective sharers, it may not require registration. The law in this regard has been crystallized in *Nani Bai v. Gita Bai Kom Rama Gunge*, AIR 1958 SC 706, wherein it was held as under:

"Such a partition may be effected orally, but if the parties reduce the transaction to a formal document which is intended to the evidence of the partition, it has the effect of declaring the exclusive title of the coparcener to whom a particular property is allotted by partition, and is, thus, within the mischief of Section 17(1)(b), the material portion of which has been quoted above. But partition in the former sense of defining the shares only without specific allotments of property, has no reference to immovable property. Such a transaction only affects the status of the member or the members who have separated themselves from the rest of the coparcenary. The change of status from a joint member of a coparcenary to a separated member having a defined share in the ancestral property, may be effected orally or it may be brought about by a document. If the document does not evidence any partition by metes and bounds, that is to say, the partition in the latter sense, it does not come within the purview of Section 17(1)(b), because so long as there has been no partition in that sense, the interest of the separated member continues to extend over the whole joint property as before."

25. Per contra, Sri D. Prakash Reddy, learned counsel for the appellants has placed reliance upon 2 judgments of the Supreme Court in *Kale and others v. Deputy Director of Consolidation and others*, AIR 1976 SC 807 and *Roshan Singh v. Zile Singh*, AIR 1998 SC 881. In *Kale's* case (Supra 4) Justice Fazl Ali has rendered the main judgment on behalf of Justice Krishna Iyer also Justice Sarkaria, has agreed with the opinion of Justice Fazl Ali but added additional reason Para 9 of the leading judgment the Principle was set out in the following words:

"We would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of family settlement or arrangement members of family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and good will in the family."

26. In Roshan Singh's case (Supra 5) the question relating to requirement of registration of a memorandum of family arrangement as contrasted to an instrument of partition, was examined in depth. The question has been addressed in Para 5 of the said judgment in the following words:

"Both the learned Single Judge as well as the Division Bench have construed the document Exh. P-12 to be a memorandum of family arrangement and not an instrument of partition requiring registration and therefore admissible in evidence under the proviso to section 49 of the Act, and have referred to certain decisions of this Court in support of that conclusion. In support of the appeal, Shri S.N., Kacker, learned counsel for the appellants has mainly contended that the document Exh. P-12 is an instrument of partition and therefore required registration under section 17 of the Act. It is urged that the High Court has on a misconstruction of the terms wrongly construed it to be a memorandum of family arrangement and admissible for the collateral purpose of showing nature of possession under the proviso to section 49 of the Act. In substance, the submission is that the document does not contain any recital of a prior, completed partition but on its terms embodies a decision which is to be the sole repository of the right and title of the parties i.e. according to which partition by metes and bounds had to be effected."

27. The legal principle has been elaborated in paras 9 and 10 in the following words:

"It is well-settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under section 17(1)(b) of the Act, a writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Section 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some 1114 right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity

of registering such a document. Two propositions must therefore flow: (1) A partition may be effected orally; but if it is subsequently reduced into a form of a document and that document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, section 49 of the Act will prevent its being admitted in evidence. Secondary evidence of the factum of partition will not be admissible by reason of section 91 of the Evidence Act, 1872. (2) Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even though they are unregistered, to prove the fact of partition: See Mulla's Registration Act, 8th edn., pp. 54-57.

The tests for determining whether a document is an instrument of partition or a mere list of properties, have been laid down in a long catena of decisions of the Privy Council, this Court and the High Courts. The question was dealt with by Vivian Bose, J. in *Narayan Sakharam Patil v. Cooperative Central Bank, Malkapur & Ors.*, ILR (1938) Nag. 604. Speaking for himself and Sir Gilbert Stone, CJ. the learned Judge relied upon the decisions of the Privy Council in *Bageshwari Charan Singh v. Jagarnath Kuari* LR (1932) 59 IA 130 and *Subramanian v. Lutchman* LR (1923) 15 IA 77 and expressed as follows:

"It can be accepted at once that mere lists of property do not form an instrument of partition and so would not require registration, but what we have to determine here is whether these documents are mere lists or in themselves purport to "create, declare, assign, limit or extinguish any right, title or interest" in the property which is admittedly over Rs. 100 in value. The question is whether these lists merely contain the recital of past events or in themselves embody the expression of will necessary to effect the change in the legal relation contemplated."

Sir Gilbert Stone, CJ speaking for himself and Vivian Bose, J. in;

Ganpat Gangaji Patil v. Namdeo Bhagwanji Patil & Ors., ILR (1942) Nag. 73 reiterated the same principle. See also: order cases in Mulla's Registration Act at pp. 56-57."

28. Thus a memorandum of a family arrangement or an instrument containing the list of properties to be enjoyed peacefully by each of the sharers is not liable to be construed as an instrument of partition itself and it does not require compulsory registration. Bearing the above principles in mind when we analyse and examine Ex.B16, which is placed at page 327 of the paper book filed by the learned counsel for the appellants, the following sentence makes the intention of the parties very clear:

VERNACULAR MATTER

29. Which when translated indicates a clear arrangement/agreement to enjoy the respective lands lying in various survey numbers for efficient use of it by the 3 sons (sharers) of Yella Reddy. We are, therefore, of the opinion that Ex.B16 is not

an instrument of partition by itself but it merely recorded an event of partition that had taken place on 24.02.1980, Sunday amongst the 3 sharers of the Branch of Yella Reddy namely Mohan Reddy, Janga Reddy and Bal Reddy. Ex.B16 merely endorses the arrangement worked out amongst the 3 sharers for separate possession and enjoyment of the respective lands.

30. If Ex.B16 is not an instrument of partition, but a mere enumeration of the list of properties that have fallen to the respective shares of 3 brothers namely Mohan Reddy, Janga Reddy and Bal Reddy and it does not require any registration as per the legal principles enunciated in Nani Bai and Roshan Singh cases. The fact that some revenue records or revenue receipts are sought to be pressed into service for demonstrating the joint nature of ownership need not detain us, for, no revenue record or a receipt of payment would confer any title with regard to the immovable properties. At best they may reflect the actual possession of the lands held by the respective sharers.

31. We draw further support from the deposition of DW.2, who is none other than the 1st defendant in the suit, M. Bal Reddy (Junior). Mr. Bal Reddy (Junior) is the younger brother of both Mohan Reddy, the predecessor-in-interest and title of defendant Nos. 2 to 7 & 9 and Janga Reddy, predecessor in interest and title of plaintiffs and defendant No. 8. Therefore, he would stand to gain if the suit is decreed as he would straight away derive 3rd share of the suit schedule properties. But, yet, DW.1 has deposed as under:

"After the partition, myself and my brother M. Janga Reddy have jointly sold our respective shares in Sy.No.50 i.e, Ac.40-00 and 20-00 gts. to A.P. Housing Board through a regd. sale deed doc. No.6565/82, dated 13-08-1982. We received the consideration amount from A.P. Housing Board by way of account payee cheque. M.Janga Reddy received Rs. 2,34,600/- vice account payee cheque No.453139, dated 10- 08-1982. I received Rs. 4,69,200/- vide account payee cheque No.453138, dated 10-08-1982. M. Mohan Reddy and M.Malla Reddy were formally joined as co-vendors, since their names were continued as co-pattedars in the revenue records, but they had not received any sale consideration."

(Emphasis is played now)

32. This apart when a portion of the land which fell to the share of senior Malla Reddy was acquired by the State for purpose of formation of a road to the housing project undertaken by the AP Housing Board, Mr. Bal Reddy (Junior) and D8, the son of 1st plaintiff and Janga Reddy have participated in those proceedings clearly disclosing that the land in question fell to the share of M. Malla Reddy (Senior) S/o M. Bal Reddy and brother of Yella Reddy. The statement of DW.2/1st defendant acquires significance and hence, it reads as under:

"The A.P. Housing Board acquired part of land in Sy. No.13/A.M. Laxamma, wife of my paternal uncle M. Malla Reddy filed a claim petition before the land Acquisition Officer claiming compensation for the said acquired land. I was made party to the said proceedings and so also M. Janga Reddy. Pending the said

proceedings, M. Janga Reddy died, his son M. Malla Reddy (deft-8) participated in the said proceedings. Myself and deft-8 filed affidavits to the effect that the acquired land fell to the share of M. Mohan Reddy in the partition and that no other branch has a share in the said land. The compensation for the said acquired land awarded to the branch of M. Mohan Reddy."

(Emphasis is brought out)

33. During the cross-examination by the plaintiffs this witness has reiterated that the partition amongst the brothers took place at February, 1980:

"The partition among our brothers took place in February 1980. In the said partition I got Ac.40 in survey No.15. The chief affidavit was prepared to my instructions. I did not peruse the Plaint and the written statement before filing my chief affidavit. Mohan Reddy had got the land in Survey No.10,11 and 13 he totally got 32 Acre and odd. Janga Reddy had got the land in S.No.18 and part of S.No.50. He also got a new house at Pocharam village Old house was allotted to me. Sale deed in favour of Housing Board was executed through our GPA for the land in S.No.50. The witnesses voluntaries that the mediator by force get entered into that transaction. GPA sold the land S.No. 50 @ Rs. 15,000/- to Housing Board but paid @ Rs. 10,000/- to us. I do not remember what was the cash component received by me. I received about Rs. 4,00,000/- through cheques. I may have receive Rs. 6,20,000/- totally. Janga Reddy got about Rs. 3,10,000/-."

34. With regard to the land acquisition proceedings in which wife of Malla Reddy (senior) sought for payment of compensation in the cross examination DW.1 has categorically pointed out that himself and D8 who is son of Janga Reddy and 1st plaintiff have filed affidavits and those affidavits are marked as Exs.B13 and B14. In Exs.B13 and B14 clearly the family settlement arrived at has been adverted to by them.

35. This could be one strong circumstance against the plaintiff's failure to explain why the son of the 1st plaintiff and brother of the 2nd plaintiff was impleaded as D8 to the suit. If there is no partition and if the properties were lying in joint ownership, the question of 8th defendant filing an affidavit lending support to the claim of the wife of Malla Reddy (senior) for payment of compensation by the land acquisition officer would not have arisen. Even assuming that at best there could have been a partition between Malla Reddy (senior) and his brother M. Yella Reddy, the common ancestor of the parties, hence, defendant Nos. 1 and 8 have lent support to the wife of the deceased M. Malla Reddy (senior) to enable her get compensation from the land acquisition officer, but still the plaintiffs and defendant No. 8 have failed to extract during cross examination anything to contradict the statement made by defendant No. 1 that there was partition between 3 brothers Mohan Reddy, Janga Reddy and himself, Bal Reddy (Junior) in Feb 1980. But for the said partition, Janga Reddy could not have received sale consideration amount from the AP Housing Board

for the 20 acres of land and Defendant No.1 could not have received sale consideration for 40 acres of land lying in survey No. 50 sold to AP Housing Board. If there was no partition amongst Mohan Reddy, Janga Reddy and Bal Reddy, the 3 brothers and if the properties in particular lying in survey No. 50 are liable to be treated as jointly owned by them, as they originally fell to the share of their father, Yella Reddy then Mohan Reddy cannot be excluded from getting his share of the sale consideration amount for having sold the entire 60 acres of land to AP Housing Board.

36. We also derive support that there was partition amongst the 3 brothers from the fact that Ex.A30 is a registered sale deed bearing document No. 7493/1991. This was executed on 31.10.1991 by M. Janga Reddy, the predecessor in interest and title of plaintiffs and D- 8. He sold land of an extent of Ac.0.20 guntas lying in survey No. 18/part pocharam village for a sale consideration of Rs. 48,400/- the recitals in this document reads as under:

"WHEREAS the vendors are the absolute owners and peaceful possessors of the Agricultural Dry land in Survey 18/part, admeasuring an extent of 20 Guntas, (total admeasuring area 10 Acres 31 gts.), an extent of admeasuring 6 Acres 27 guntas is the share of the said Vendors No. 1 and 2), situated at Pocharam village, Ghatkesar Mandal, Ranga Reddy District, A.P. by virtue of ancestral one."

37. M. Janga Reddy and Bal reddy, the 2 brothers would not have sold the immovable property by the cover of Ex.A30 leaving aside Mohan Reddy, but for the partition said to have been taken place amongst them in February, 1980. Further defendant No.8, M. Malla Reddy (Junior) S/o. Janga Reddy filed an affidavit, before the Land Ceiling Tribunal vouching for family partition.

38. Ex.B7 is a copy of the sale deed bearing document No.2680/1997 executed on 01.10.1997 by Janga Reddy his wife, 1st plaintiff and his son, D8. The following recital is made:

"Whereas the Vendors are the absolute owners of the agricultural dry land bearing survey No.18, admeasuring Ac.6-31 Gts., situated at Pocharam Village and Gram Panchayat, Ghatkesar Mandal, Ranga Reddy District."

39. How could they represent as absolute owners, if these lands have not fallen, in partition in February, 1980, to the share of Janga Reddy.

40. Equally important is Ex.B9, a sale deed bearing document No. 1605/1998 executed by M. Janga reddy and the 1st plaintiff herein in favour of Dr. Kumar Harnath and his wife Asha Rani, and also Ex.B8 a sale deed bearing document No. 1604/1998. The following recitals are found therein:

"Whereas the Vendors are the absolute owners and possessor of the Agriculture Land in survey No.18, Area Ac. 2-31 gts. Situated at Pocharam village and G.P. Ghatkesar Mandal. R.R.Dist. by virtue of patta No.20, Pass book No. 100929/28561.

Whereas the Vendors offered to sell Agriculture land in Survey No. 18, Ac. 0-20 Gts., of Pocharam village, clearly written in schedule mentioned of the Vendees for a total sale consideration of Rs. 1,09,000/- and the Vendees have agreed to purchaser the same.

Whereas the Vendors are the absolute owner and possessor of the Agricultural Land in Survey No. 18, Area Ac.2-31 Gts, situated at Pocharam villagae and G.P., Ghatkesar Mandal, R.R. Dist., by virtue of patta No. 20. Pass Book No. 100929/28561.

Whereas the Vendors offered to sell the Agriculture Land in survey no. 18, Ac.0-20 Gts., of Pocharam village, Clearly written in schedule mentioned of the Vendees for a total sale consideration of Rs. 1,09,000/- and the Vendees have agreed to purchase the same."

41. If there is no partition, how can they deal with the ancestral property, in their individual capacity.

42. We also derive strength from Ex.B12 a registered sale deed bearing document No.3599 of 2003. It was executed on 25.03.2003 by the 1st plaintiff in favour of B. Prabakar Reddy. In that document following recital is made by the 1st plaintiff:

"whereas the Vendor is the absolute owner and possessor of the Agriculture Dry land, in survey No.18, Area Ac. 0-10 Gts, situated at Pocharam Village and Gram Panchayat, Ghatkesar Mandal, R.R.Dist. by virtue of Patta Pass book No. 8219/405061, Patta No. 914, Issued by MRO Ghatkesar, R.R.Dist.,

Whereas the Vendor has offered and agreed to sell the schedule property to the vendee for a total sale consideration of Rs. 68,500/- and the vendee has agreed to purchase the same."

43. If there is no partition effected between the brothers of Janga Reddy, how can the 1st defendant execute the sale deed with regard to one of the ancestral properties on 25.03.2003, which is just few days prior to the filing of the civil suit. She could not explain this circumstance. This apart, Ex.B11 is another sale deed bearing document No. 6000 of 2003 executed on 05.06.2003 by defendant No.8 in favour of B. Venkatesh Goud, wherein the following recitals are found:

"whereas the Vendor is the sole and absolute owner of the Agricultural land bearing survey No. 18, admeasuring Ac.0-34 Gts., situated at Pocharam village, and Gram Panchayat Ghatkesar Mandal, R.R.District, by virtue of Patta No. 273,in Pass Book.No. 405582/405943.

Whereas the Vendor has offered to sell a piece of land admeasuring Ac.0-02 Guntas., (242 Sq.Yds., or 202.31 Sq.Mtrs.,) in Survey Nos. 18, of Pocharam free from encumbrances for a total consideration of Rs. 19,500/- and the purchaser agreed to purchase the same for the said consideration."

44. How can D8 deal with an ancestral property, all on his own, while his mother

and sister filed by then civil suit contending that there is no partition between Mohan Reddy, Janga Reddy and Bal Reddy.

45. B10 is a registered sale deed bearing document No. 2850/2003 executed on 17.03.2003 by Padmamma, 1st plaintiff in favour of B.Prabakar Reddy in which the following recitals are made:

"Whereas the Vendor is the absolute owner and possessor of the Agriculture land bearing survey No. 18, Admeasuring area Ac.0-16 Gts., situated at Pocharam Village and Gram Panchayat, Ghatkesar Mandal, R.R. Dist. By virtue of Patta Pass Book No. 282198, Patta No. 176, Issued by M.R.O. Ghatkesar, R.R.,Dist.,

Whereas the Vendor has offered and agreed to sell the schedule property to the vendee for a total sale consideration of Rs. 1,09,500/- and the Vendee has agreed to purchase the same."

46. If there is no partition, how can she execute this sale deed, with regard to ancestral property.

47. Thus the recitals found in these documents clearly bring out that the vendors have declared themselves as absolute owners and they could not have done so, but for the partition that took place amongst the brothers of Janga Reddy in Feb 1980. The plaintiffs could not render any effective answer to this objection raised by the learned senior counsel for the appellants. For these reasons, Ex.A-31 and Ex.B-6 not speaking about the partition amongst the 3 brothers in February, 1980 is liable to be treated as self serving convenient position, from which no firm conclusion that there was no partition has taken place in February, 1980 cannot be drawn. Hence, Ex.A-31 and Ex.B-6 are not conclusive proof of "no partition" theory set up by the plaintiffs.

48. In this regard, learned senior counsel for the appellants has placed reliance upon the judgment rendered by the Supreme Court in Kenchegowda (since deceased) by legal representatives v. Siddegowda Alias Motegowda (1994) 4 SCC 294, wherein it was set out as under:

"Even otherwise, a suit for partial partition in the absence of the inclusion of other joint family properties and the impleadment of the other co-sharers was not warranted in law."

(Emphasis is applied now)

49. Therefore, we are of the opinion that the trial court committed an error in its finding that the parties are still members of an undivided Joint Family and consequently, it had arrived at an unsustainable conclusion that the suit is liable to be decreed.

50. In view of our findings that there was partition amongst the three brothers namely M. Mohan Reddy, Janga Reddy and Bal Reddy (Junior) and Ex.B12 is only a document evidencing the family arrangement but not a deed of partition and in view of the legal principle enunciated by the Supreme Court in Kale's case

(Supra), Nani Bai's case (Supra 3) and Zile Singh's case (Supra), we are of the opinion that suit must be dismissed.

51. Accordingly, the suit is dismissed allowing this Appeal Suit. No costs.

52. Consequently, miscellaneous petitions, if any, shall stand closed.