
(2006) 03 AP CK 0151
In the Andhra Pradesh High Court
Case No : AS No. 1624 of 1998

Mamidi Sai Reddy and Others

APPELLANT

Vs

M. Shiva Reddy and Others

RESPONDENT

Date of Decision : 06-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(2), Order 20 Rule 5, Order 41 Rule 24

Citation : (2006) 6 ALD 28

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

Bench : Single Bench

Advocate : A. Pulla Reddy, for the Appellant; M. Narender Reddy, for Respondent Nos. 1 to 7 and 19 to 21, K. Raghuvver Reddy, for Respondent Nos. 9 to 18 and Prabhala Rajasekhar, for Respondent Nos. 22 and 23, for the Respondent

Judgement

P.S. Narayana, J.—The unsuccessful plaintiffs in O.S. No. 433 of 1989 on the file of II Additional Senior Civil Judge, Ranga Reddy at Saroornagar, Hyderabad had preferred this appeal. The appellants-plaintiffs filed suit for partition and separate possession of their 1/3rd share in the total extent of Ac. 19.01 cents covered by Survey Nos.185, 186, 187, 188 and 189 of Lothukunta, Alwal Village of Malkajgiri Mandal and for costs. On the respective pleadings of the parties, the learned Judge settled the issues. But further, by an order in I.A. No. 504 of 1993 certain issues were framed. The learned Judge on the strength of the evidence of P.Ws. 1 and 2, D.Ws.1 to 4, Exs.A1 to A11 and Exs.B 1 to B27 ultimately dismissed the suit and aggrieved by the same, the present appeal is preferred by the unsuccessful plaintiffs.

2. Respondent No. 4 died and R.19 to R.21 were brought on record as the legal representatives of R.4. A.S.M.P. No. 1946 of 2005 was filed by the proposed parties on the ground that they are also entitled to their respective shares in the share of their father-Ram Reddy. It appears the sons of Ram Reddy filed the present suit for partition. The litigation appears to be between three branches,

Buchi Reddy, Ram Reddy and Laxma Reddy. This Court by an order dated 3.11.2005 allowed the said application impleading them as respondents 22 and 23 making it clear that the entitlement or disentitlement to the respective shares of the proposed parties now being impleaded also to be decided at the time of disposal of the main appeal.

Contentions of Sri Pulla Reddy:

3. Sri Pulla Reddy, the learned Counsel representing the appellants had drawn the attention of this Court to the respective pleadings of the parties, the evidence available on record and the issues originally settled and the issues which had been framed by virtue of an order made in I.A. No. 504 of 1993 and how the learned Judge erred in not deciding the issues framed by virtue of the order in I.A. No. 504 of 1993. The learned Counsel would contend that this, in fact, had caused serious prejudice. The learned Counsel also had drawn the attention of this Court to Order XIV Rule 2 of the CPC (hereinafter, in short, referred to as "the Code") and would maintain that the general rule is that the matter may have to be decided on all issues. The Counsel also had explained, that it cannot be said that the issues which had been left over are unnecessary issues and there are other comprehensive issues covering all the left over issues also hence, serious prejudice is caused. The learned Counsel also had explained the difference in the language introduced in Order XIV Rule 2 of the Code by virtue of 1976 Amendment Act. While further elaborating the submissions the Counsel would maintain that the respective stands taken by the parties also may have to be looked into. It is a suit for partition filed by one branch and no doubt the same is resisted on the ground that there was prior partition. This is a case where a suit for partition was instituted after the re-grant and hence, the stand taken that a suit for partition itself is not maintainable for the reason that these properties being inam properties such action cannot be maintained, also cannot be sustained. At any rate, the learned Counsel would maintain that this is a matter, which may have to be gone into at the appropriate stage. Incidentally, the learned Counsel also had referred to the order made in A.S.M.P. No. 1946 of 2005 and would contend that all other aspects relating to the occupancy rights, the occupancy certificate, the orders passed by the hierarchy of revenue authorities and the writ Court, these are all matters which may have to be decided afresh by the learned Judge after giving due consideration to the issues which had been framed in I.A. No. 504 of 1993 also and in the absence of the same, the judgment made cannot be said to be in accordance with the Order XX Rule 5 of the Code. The learned Counsel also would contend that in a case of this nature the other side cannot take advantage of even Order XLI Rule 24 of the Code for the reason that this is a case where there is total non-consideration of the issues which had been framed in I.A. No. 504 of 1993 and inasmuch as the approach of the learned Judge itself being not in accordance with law, this is a fit matter to be remanded.

Contentions of Sri Narendra Reddy:

4. Sri Narender Reddy, the learned Counsel representing R.1 to R.7 and R.19 to R.21 made the following submissions:

The learned Counsel would maintain that on a careful scrutiny of the issues which had been framed originally and subsequent thereto, the comprehensive issue, issue No. 4 had been answered and even if the other issues are not answered the effect would be the same. The learned Counsel also pointed out to the documentary evidence available on record and would contend that even within the branches there were partition decrees subsequent thereto and it is clear that there was prior partition between the branches and hence, this question need not be agitated again. The learned Counsel also pointed out to the different proceedings Ex.A1, Exs.B1 to Ex.B12 and would contend that the fact that these are Inam lands is not in serious dispute. When that being so the question of maintaining a partition action itself is highly doubtful especially in the light of the ratio in Lokraj and Others Vs. Kishan Lal and Others, , and in view of the same it would be a futile exercise to make an order of remand. The learned Counsel also had drawn the attention of this Court to Dr. S.V.S. Ravi Krishna Vs. K. Sita Ramaiah and Another, , and would maintain that in view of the fact that the comprehensive issue was considered and findings had been recorded, the non-consideration of certain un-necessary issues may not alter the situation in any way and it cannot be said that any prejudice had been caused in this regard. In alternative, the Counsel would submit that in the light of the clear language specified under Order XLI Rule 24 of the Code, in stead of making an order of remand inasmuch as the whole evidence is available on record, this Court as appellate Court can finally decide the matter if need be by resettling the issues here itself. The learned Counsel placed strong reliance on B. Narasimha Reddy and Another Vs. Bhaskara Rao Joshi and Another, . The learned Counsel also incidentally had pointed to the oral and documentary evidence Exs.B16 and Ex.B.22 and also had taken this Court through the findings which had been recorded by the learned Judge in detail in relation to the prior partition as well. The Counsel would conclude that in the light of the peculiar facts and circumstances, if an order of remand is made the contesting respondents, in fact, would be put to serious prejudice since the rights of the parties had been settled long back by virtue of prior partition and no purpose would be served by making an order of remand. The learned Counsel also relied on Nedunuri Kameswaramma Vs. Sampati Subba Rao, and Kunju Kesavan Vs. M.M. Philip I.C.S. and Others, .

Contentions of Sri Raghuveer Reddy:

5. Sri Raghuveer Reddy, the Counsel representing R.9 to R.18 had taken this Court through the relevant findings made by the learned Judge and also the issues originally settled and subsequently framed by virtue of a judicial order. The learned Counsel also incidentally made certain submissions in relation to the oral and documentary evidence available on record.

6. Heard the Counsel. Perused the oral and documentary evidence available on

record.

7. In the light of the rival contentions advanced by both the Counsel, the following points arise for consideration in this appeal:

1. Whether the judgment and decree made by the trial Court and the findings recorded thereon are in any way vitiated by virtue of non-consideration of the issues 1 and 2, settled by virtue of orders made in I.A. No. 504 of 1993 ?
2. Whether this Court, in the peculiar facts and circumstances, can exercise the powers and decide the matter here itself without making an order or remand by virtue of Order XLI Rule 24 of the Code?
3. Whether the stand taken that the suit for partition itself is not maintainable, be gone into at this stage, in the facts and circumstances of the case?
4. If so, to what relief the parties would be entitled to?

Point No. 1:

8. The appellants-plaintiffs filed the present suit for partition of their 1/3rd share. Before taking up the further discussion it may be appropriate to have a look at the respective pleadings of the parties. The plaintiffs pleaded in the suit for partition as hereunder:

That originally Mamidi Veera Reddy obtained lands from the owners on lease and continued his tenancy till the date of his death which occurred 50 years ago, leaving behind him three sons by name (1) M. Buchi Reddy, (2) M. Ram Reddy and (3) M. Laxma Reddy, who succeeded to the interest of their father in the said lands, who constituted joint family and enjoyed the lands jointly and in common having joint mess.

As time went on, the above said three brothers, sons of Mamidi Veera Reddy divided in mess as each one of them set up their separate families, but continued the jointness in enjoyment of the suit lands of admeasuring 51 Acres 03 Guntas consisting of Survey Nos. 183, 162, 185, 186, 187, 188, 189 and 191, situated at Lothukunta, Alwal Village. The agreement of Sale signed by the owners in favour of all the three sons of Late M. Veera Reddy dated 3-7-1963 is filed herewith.

As the prices of land have enormously increased, the owners became greedy and dumped band of Gundas in the lands and to dispossess the plaintiffs and defendants forcibly from the suit lands and the parties/ plaintiffs and defendants have put up a stiff fight and the owners had to concede to the legal rights and claims to the parties who are in actual possession and enjoyment of the suit lands. Thus the illegal attempts of the owners to dispossess the actual occupants was threatened and the owners executed the document of Agreement of Sale dated 16-8-1987 agreeing to receive the sale price of Rupees Three Lakhs and inconsideration thereof, to depose before the R.D.O. for conferring occupancy rights.

Accordingly, a petition was filed before the R.D.O. Chevella by all the heirs of Late M. Veera Reddy, consisting of 3 branches represented by the plaintiffs and the defendants. The owners had come before the Tribunal and gave sworn statements before the R.D.O. praying issuance of occupancy certificate in respect of petition schedule lands in favour of all the three branches of three sons of late Mamidi Veera Reddy. The Xerox copy of the Occupancy Certificate granted by Inam Tribunal dated 7-4-1988 is filed herewith.

After the clouds in respect of property is cleared, and occupancy certificate is issued and the threats of dispossession by the owners have eclipsed, the branch of Buchi Reddy, the eldest son of Mamidi Veera Reddy have with ulterior motive in order to grab the lands situated on the road side, filed a Revenue Appeal bearing No. B3/8491/ 89 before the District Collector, Ranga Reddy District, seeking for declaring the defendants 1 to 7 as occupants in respect of Survey Nos. 185 and 186, situated at Lothukunta, Alwal Village to the extent of 6 Acres 37 Guntas, by correcting the occupancy certificate issued by R.D.O. Chevella Division.

The plaintiffs submit that the Revenue case filed by defendants 1 to 7 is nothing but an attempt to deprive the others 2 branches of Ram Reddy, the Second son of Mamidi Veera Reddy and Laxman Reddy, the third son of Mamidi Veera Reddy, by setting up plea of oral partition which has no substance.

This adverse act of defendant No. 1 to defendant No. 7 has created a great apprehension in the minds of the plaintiffs who are the sons of Ram Reddy who are entitled for 1/3rd share in all the lands held by the joint family as the defendant No. 1 to defendant No. 7 representing the branch of Buchi Reddy the eldest brother are trying to deprive them from their legitimate share of 1/3rd in the road side and non-road side lands equally with other two branches without any discrimination.

The defendants 8 to 13 represents the 3rd son Laxma Reddy have been made defendants as they refused to join the suit for partition and separate possession of 1/3rd share to each one of the 3 branches representing 3 sons of Mamidi Veera Reddy.

The plaintiffs humbly submit that late Ram Reddy had 3 sons by name (1) M. Veera Reddy who also died on 21-7-1988 after the occupancy certificate issued on 7-4-1988 leaving behind him, his widow, the plaintiff No. 3 and the eldest son by name Rama Krishna Reddy (being soldier in Defence Army Service not available to join the suit but represented by his mother plaintiff No. 3) and second son by name M. Venu Gopal Reddy who is plaintiff No. 5 and the second son of Late M. Ram Reddy by name M. Sai Reddy who is plaintiff No. 1 and third son of late M. Ram Reddy by name M. Ranga Reddy who is plaintiff No. 2; thus the plaintiffs are present members of Ram Reddy's branch to claim the legitimate 1/3rd share of Late Ram Reddy in the entire joint family lands.

The plaintiffs humbly submit that there was no oral partition at any time in

between the branches up till now. The Revenue Records was manipulated by the eldest son of Late M. Veera Reddy by name M. Buchi Reddy who managed to get his name in Survey Nos.185 and 186 consisting of 6 Acres 37 Guntas which is situated on the road side. But in fact no partition had taken place and the branch No. 2 belonging to Ram Reddy is shown in Revenue Record to be in possession of Survey No. 187 extent being 1 Acre 33 Guntas only thus the Revenue Record cannot be relied upon in token of partition in between the branches. Further, the Survey No. 189 is shown as belonging to all the branches and out of which an extent of 3? Acres had been sold by the members of all the branches. This clearly shows that there was no partition much less equal partition of extent between the branches. It is interesting to note that the defendants 8 to 13 representing the branch of Laxma Reddy the third son of Late M. Veera Reddy is having an extent of only 2 Acres 2 Guntas in Survey No. 188. Thus it has become clear that Revenue entries were not representing the actual shares of the 3 branches as there was no actual partition in between the branches.

The plaintiffs have every legal right to putforth their legal demand partition and separate possession to their branch of Late M. Ram Reddy, by dividing the entire existing lands by metes and bounds consisting of good/bad situated at on the road side and for off consisting of all Survey Numbers consisting of an extent 19 Acres 01 Guntas in Survey Nos.185, 186, 187, 188 and 189 situated at Lothukunta, Alwal Village, Malkajgiri Mandal, Ranga Reddy District without any distinction in between the parties.

9. Defendants 1 to 7 in the written statement denied the allegations and pleaded as hereunder:

At the outset most of the allegations made in the plaint are neither true nor correct but based upon concocted versions with mere surmises and conjectures as such the allegations are deemed to be denied in toto. Indeed, the suit claim for partition and separate possession is barred by limitation and untenable neither on law nor on facts. However, the matter is pending before the Hon''ble High Court with regard to the issuance of joint Inam Occupancy Rights Certificate, which is subject-matter of the suit, as such the suit is filed at the premature stage and even otherwise, the suit is badly framed on frivolous and vexatious allegations for which the suit is liable to be dismissed in limini.

The Para Nos. 1 and 2 of the plaint are being concerned with the description of the parties, as such these paras do not call for any specific relief.

With regard to Para No. 3 of the plaint, it is true to say that late M. Veera Reddy had continued the cultivation, over the suit properties and he demised leaving his three sons by name M. Buchi Reddy (died) 2. M. Ram Reddy and 3. M. Laxma Reddy and succeeded to the interest of their father. It is false to say that the sons of late M. Veera Reddy continued and enjoyed the lands jointly, as such the plaintiffs are called to prove the same.

With regard to Para No. 4 of the plaint, it is false to say that the sons of late

Veera Reddy continued in the joint family, as such the same is categorically denied. Indeed, the sons of late M. Veera Reddy got the division of suit properties and separately residing since more than 40 years. The agreement of sale in between the owners and three sons of late Veera Reddy will not be useful in any manner for the proper appreciation of suit relief of partition, as such the same has got no relevancy.

With regard to Para No. 5 of the plaint, it is false to say that the owners became greedy and brought the gunds into the lands with an object to dispossess the plaintiffs and the defendants forcibly, from the possession of the suit properties and both parties have put up a stiff fight and the owners had to concede the legal rights and claims of the parties etc. As such denied by appears to have been created for the purpose of suit claim. The defendants 1 to 7 have no knowledge about the agreement of sale dated 16.8.1987 said to be entered with the owner and even otherwise, it is brought into existence with an object to get Inam occupancy rights certificate.

With regard to Para No. 6 of the plaint, it is specifically submitted that the plaintiff No. 2 is being an advocate assured with these defendants father that the Inam occupancy certificate should be obtained from the Chairman of the Tribunal-cum-R.D.O., Chevella and the possessory rights of the sons of late M. Veera Reddy shall be protected without disturbing to the long ago partition, and their respective possession. The father of the defendants 1 to 7 is not a literate person and father of these defendants might having the confidence, over the plaintiff No. 2, believed over the assurances, versions and never cross check the acts of the plaintiffs specifically the plaintiff No. 2 who some how managed the revenue officials and obtained the Inam Occupancy Right Certificate in the name of M. Buchi Reddy, Ram Reddy and Laxma Reddy as joint possessors, suppressing the fact of partition. The plaintiff No. 2 also managed the revenue officials that the statement of M. Buchi Reddy was not even recorded which discloses the fraud of plaintiff No. 2 and the professional misconduct on his part. Having annoyed of the joint Occupancy Right Certificate for the suit lands that these defendants have filed the Inam appeal immediately on coming to know the fraud and the District Collector without providing opportunity to hear the case of the appellants, i.e., the defendants herein and without considering the merits of the appeal simply dismissed for default. Against the said dismissal order of the District Collector, R.R. District these defendants immediately filed a writ petition of 1990 and obtained interim status-quo orders from the Hon"ble High Court through the W.P.M.P. No. of 90 on. Therefore, the occupancy right certificate said to be granted by Inams Tribunal on 7.4.1988 holds no water and bad in law and the same was obtained on mis-representation by the plaintiff No. 2. Even otherwise, the partition in between the defendants 1 to 5 and their father took place through the partition decree passed in O.S. No. 84 of 1983 in the Court of the learned Munsiff, Hyderabad West and South, R.R. District. The defendant No. 9 also filed a partition suit, registered as O.S. No. 5 of 1982 against his brothers and father on 30.11.1981 and also the suit was decreed. These suits establishes

the fact that there was a partition with meets and bounds and subsequently acted upon by all the persons concerned, as such the present suit is filed with oblique motive to disturb the possession of the defendants and to gain more valuable piece of land. Indeed, in the earlier partition these defendants father have been allotted the road side and the plaintiff No. 2 misused the confidence and belief and under the guise of obtaining the occupancy right certificate once again making efforts to litigate for partition contravening the provisions of law. It is absolutely false to say that the owners of land gave sworn statements before the R.D.O.-cum-Inam Tribunal praying for the issuance of occupancy right certificate in respect of the suit lands. The certificate granted by the Inams Tribunal dated 7.4.1988 has got no value for the purpose of the above suit as the relevant issue is pending before the Hon"ble High Court. The rest of the other allegations which are not specifically admitted are deemed to be denied in toto. With regard to Para No. 7 of the plaint, it is false to say that after the cloud in respect of the schedule property clear by virtue of the joint occupancy right certificate and the alleged threats of dispossession by the earlier owners, have eclipsed these defendants filed the appeal before the District Collector, seeking to declare them as occupants in respect of Sy.Nos. 185 and 186, situated at Lothukunta Village, Alwal to the extent of Ac.6.37 gts. By correcting the occupancy right certificate. As such the mala fides attributed against these defendants are denied except the filing of the appeal before the District Collector, R.R. District with an object to protect the earlier partition and separate possessions of the parties. It is also understood by these defendants that the plaintiffs have also got the partition among themselves and suppressing the same, the plaintiff No. 2 not only obtained the Inam Occupancy Right Certificate as joint but also filed this suit with oblique motive.

With regard to Para No. 8 of the plaint, it is false to say that the Inam appeal case is filed by these defendants with an attempt to deprive other two branches of late M. Ram Reddy by setting up the plea of oral partition as such the same is denied categorically and the plaintiffs are called to prove that there was no partition in between the sons of late Ram Reddy.

With regard to Para No. 9 of the plaint, it is false to say that the acts of these defendants in filing the inam appeal have created a great apprehension in the minds of the plaintiffs with the alleged 1/3 share over Sy.Nos. 185 and 186, as such the same is denied calling the plaintiffs to put to strict proof. Indeed, the plaintiffs by obtaining occupancy right certificate and by way of this suit created the litigation so as to deprive the legitimate possession and rights of the defendants. It is known fact in the entire local area over the long ago partition and the separate residences of the plaintiffs and defendants have establishes the factum of partition in between them. With regard to Para No. 10 of the plaint, it is true to say that the defendants 8 to 13 have got the partition and they have obtained the partition decree from the civil Court, as such their refusal to join as the plaintiffs are just and legally tenable. However, the plaintiffs are not entitled to file the partition suit contravening the provisions of Limitation Act.

With regard to Para No. 11 of the plaint, it is true to say that M. Veera Reddy died in the month of July, 88 leaving behind him all the plaintiffs in the suit. The other allegations that the branch of Ram Reddy is entitled for 1/3 share in the present suit and specifically for partition etc. are denied calling the plaintiffs to prove the same.

With regard to Para No. 12 of the plaint, it is false to say that there was no oral partition at any time in between the sons of late M. Veera Reddy or in between M. Buchi Reddy, M. Ram Reddy, M. Laxma Reddy. Indeed, there was a partition about 40 years back and the said partition was and is acted upon, several occasions and several suits are filed in between themselves and Ors., as such the allegation of no oral partition contains no iota of truth. It is false to say that the revenue record was manipulated by the eldest son of late M. Veera Reddy, who managed to get his name in Sy.Nos. 185 and 186, consisting of Ac.6.37 gts., situated on the road side, as such the same is denied calling the plaintiffs to prove. As per the oral partition, the plaintiff No. 2 being the Counsel for late Buchi Reddy ought to have obtained the occupancy right certificate that the S.Nos.185 and 186 each admeasuring Ac.4.29 gts., and Ac.2.08 gts., in the name of Buchi Reddy or in the name of his legal heirs. The plaintiff No. 2 being the Counsel before the Inams Tribunal ought to have obtained the occupancy right certificate for and over the Sy.Nos. 187 and 189 each admeasuring Ac. 1.33 gts., and Ac.4.41/2 gts., respectively in the name of last son of Veera Reddy. It is specifically submitted that the plaintiff branch is entitled to claim the occupancy right certificate oversee. No. 1988 and Sy. No. 189 each admeasuring Ac.2.02 and Ac.4.41/2 gts. The possession of the respective parties in the revenue records discloses the fact of the parties since long ago, as such the allegation of the plaintiffs that the branch No. 2 is shown in revenue records only to the extent Sy. No. 187, admeasuring Ac. 1.33 gts., is a total lie and plea that the revenue record cannot be relied is also absolutely contains no force. It is false to say that the Sy. No. 189 belonging to all the sons of late Veera Reddy. Indeed, the portion of the land in Sy. No. 189 was sold away to late Baga Reddy, a resident of Alwal, long ago. It is absolutely false to say that the defendants 8 to 13 representing the branch of Laxma Reddy is having only Ac.2.02 gts., in Sy. No. 188. Indeed in Sy. No. 189 Laxma Reddy is having more than Ac.4.00 of land. For any reason or cause all the branches of late Veera Reddy contains each more or less Ac.6.00 of land and the legal heirs of all the sons of late Veera Reddy are entitled equally by way of succession. As there is a partition in between the sons of late Veera Reddy and even among the grand sons of late Veera Reddy, as such the suit is not tenable and liable to be dismissed in limini. Therefore, it is false to say that the revenue entries were not representing the actual shares of the three branches of late Veera Reddy and for the sake of no actual partition, as such all the allegations made in this para including the above are categorically denied, calling the plaintiffs to prove.

With regard to Para No. 13 of the plaint, it is false to say that the plaintiffs have every legal right to demand for partition and separate possession by dividing the

entire existing lands by meets and bounds, as such the same is denied categorically. The two wells existing in the suit lands were also divided and these defendants father paid huge amounts to the plaintiffs and other defendants. The three cattle sheds existing in the suit lands shows the separate cultivation and separate possession of the parties which rather disentitled the plaintiffs in claiming the suit relief. The plaintiffs father constructed four room portions and collected the rents from the tenants and after his demise, the plaintiffs are collecting the rents which discloses the separate possession and the partition among the sons of late Veera Reddy. The defendants 8 to 13 have also constructed a house and let out to the different tenants in the portion of the land fell to their share. The plaintiffs and defendants 8 to 13 never disputed the partition but the plaintiff No. 2 having misused the confidence and trust created litigation even in the minds of his brothers, after taking the occupancy right certificate. The plaintiffs have filed the present suit only with a mala fide object that they can get the share over the road side land. Indeed, at the time of partition in between the sons of late Veera Reddy, the share fell to the late M. Buchi Reddy, though situated towards the road side but it was not useful more for the purpose of cultivation. The plaintiffs and the defendant No. 8 have taken the shares over the fertile lands and at the time of partition these lands were yielding more crop and presently the value of the land fell to the share of the late Buchi Reddy increased in the market value and the defendants have also constructed the mulgies, after the division among themselves, as such the plaintiffs claim for partition is not justified and not tenable in law and rather barred by the provisions of Limitation Act. These defendants have constructed five mulgies about 20 years back and remaining five mulgies in the year 1975 which supports the plea of long partition. Therefore, the present suit for partition asking for the separate possession of the agricultural lands bearing Sy.Nos.185, 186, 187, 188 and 189 totally comprising of Ac.19.01 gts., is not tenable in law and liable to be dismissed in limini.

10. Defendants 8 to 13 filed written statement wherein the said parties pleaded as hereunder:

That similarly Para No. 2 of the plaint needs no specific reply except that the address for all notices on the defendants 8 to 13 is that of their Counsel M/s. Adnan Mahmood and K.S. Reddy, Advocates of Mahmood and Company at 9/13, M.G. Road, Secunderabad.

That in reply to Para Nos. 3 and 4 of the plaint it is submitted that M. Veera Reddy was the original lessee of lands bearing Survey Nos. 183, 162, 185, 186, 187, 188, 189, 191 admeasuring about Ac.51.08 guntas and was cultivating the same till his death, and after the demise of M. Veera Reddy his three sons M. Buchi Reddy, M. Ram Reddy and M. Laxma Reddy succeeded to his interest in the said lands and they inter se also constituted the joint family.

In reply to Para No. 5 of the plaint it is stated that there being an escalation in prices of Immovable property the owners of the land were trying to forcefully

dispossess the plaintiffs and the defendants herein who are in actual possession and enjoyment of the said lands from the suit lands. The parties herein resisted their devious designs and the original owners agreed to admit the claim of the parties herein before the concerned revenue authorities for occupancy rights in respect of the suit land, and accordingly an application was filed before the R.D.O. for granting occupancy rights in favour of family members of M. Buchi Reddy, M. Ram Reddy and M. Laxma Reddy which occupancy certificate was granted by the R.D.O.

In reply to Para Nos. 7 and 8 the contents stated therein are correct and are therefore admitted.

These defendants submit that they have also been agreeable for partitioning the plaint schedule properties and for the separate possession of 1/3rd share each to the family members of the said three sons of M. Veera Reddy namely M. Buchi Reddy, M. Ram Reddy and M. Laxma Reddy.

These defendants submit that there was no oral partition as amongst the parties till now. No partition had ever taken place nor separate possession delivered to any of the members of any of three branches. The defendant Nos. 1 to 7 have tried to manipulate the revenue records so as to create evidence to bolster up their allegations of an oral partition.

These defendants submit that the suit property is partitionable amongst the family members of the late M. Veera Reddy who had three sons namely M. Buchi Reddy, M. Ram Reddy, and M. Laxma Reddy.

11. On the strength of the pleadings the following issues were settled:

1. Whether the plaintiffs and defendants are in joint possession of the suit scheduled properties under agreement of sale?
2. Whether the occupancy right certificate issued in respect of suit land in favour of the plaintiff ?
3. Whether the suit is barred by limitation ?
4. Whether the plaintiffs are entitled to 1/3rd share in the suit scheduled properties ?
5. To what relief ?

12. It is not in serious controversy that by virtue of the orders made in I.A. No. 504 of 1993 the following issues were framed on 13.11.1995.

1. Whether the suit schedule land are already partitioned about forty years back and the father of the defendant Nos. 1 to 7 got towards his share the lands bearing Sy.Nos.185 and 186 admeasuring Ac.6.37 gts., of village Alwal as alleged in the W.S. filed by the defendant Nos. 1 to 7 and if so what is the effect of the same on this suit?

2. Whether the plaintiff No. 2 was the Counsel for late Sri Buchi Reddy, the father of the defendants Nos. 1 to 7 herein and he has failed to obtain the occupancy certificate for the lands bearing Sy.Nos. 185 and 186 of Alwal Village in the name of Buchi Reddy?

3. Whether the suit is barred by limitation ?

4. Whether the plaintiffs are entitled to 1/3rd share in the suit schedule properties ?

5. To what relief ?

13. It is also not in serious controversy that the learned Judge had not proceeded to decide the matter on the strength of these issues especially the issues 1 and 2, which had been framed by virtue of the judicial order referred to supra. This is the serious question which had been canvassed by both the Counsel in elaboration. The Counsel for appellants contending that in fact serious prejudice had been caused and the Counsel for respondents 1 to 7 and 19 to 21 otherwise contending that in fact all the aspects had been considered and in view of the fact that a comprehensive issue had been dealt with and clear findings had been recorded on all the aspects, no prejudice had been caused and hence, the said findings need not be disturbed.

14. As can be seen from the order made in I.A. No. 504 of 1993, apart from issues Nos. 3 to 5, the following issues are settled as issues 1 and 2.

1. Whether the suit schedule land are already partitioned about forty years back and the father of the defendant Nos. 1 to 7 got towards his share the lands bearing Sy. Nos. 185 and 186 admeasuring Ac.6.37 gts., of village Alwal as alleged in the W.S., filed by the defendant Nos. 1 to 7 and if so what is the effect of the same on this suit?

2. Whether the plaintiff No. 2 was the Counsel for late Sri Buchi Reddy, the father of the defendant Nos. 1 to 7 herein and he has failed to obtain the occupancy certificate for the lands bearing Sy.Nos. 185 and 186 of Alwal Village in the name of Buchi Reddy?

15. Reliance was placed on Dr. S.V.S. Ravi Krishna's case (supra), wherein this Court at page 573 observed as hereunder:

From these pleadings of the parties, at any stretch of imagination, it cannot be said to be an assertion and denial so as to give rise to the settlement of an additional issue. Further, elaborate arguments had been advanced relating to the additional issue No. 3 "Whether the Maruthi car as purchased by the defendants as stated in their written statement". When the very foundation of the suit is for declaration that the plaintiff is the sole legal heir of the deceased Dr. Padma Priya, the first issue is a comprehensive issue and all these additional issues which can be said to be ancillary issues separately need not be framed. Hence, I am of the considered opinion that the non-framing of additional issues by the

learned II Additional District Judge, Ranga Reddy District had not in any way prejudiced the rights of the Revision Petitioner. When a revision is filed against an interlocutory order, apart from satisfying the other conditions, it must also be satisfied that there would be failure of justice if the impugned order is allowed to stand, In the Matter of B.H.P. and V. Ltd., Visakhapatnam AIR 1985 AP 207. In the present matter, I am of the opinion that if the impugned order is allowed to stand, it would not occasion in any failure of justice.

16. Placing reliance on this decision, the learned Counsel representing the contesting respondents made submissions at length stating that by virtue of issue No. 4 "Whether the plaintiffs are entitled to 1/3rd share in the schedule properties" the same being a comprehensive issue having been dealt with by the learned Judge no prejudice is caused. It is no doubt true that the learned Judge on appreciation of evidence had recorded certain findings even in relation to prior partition. However, on a careful reading of issues 1 and 2, which had been referred to supra, as framed by virtue of the order in I.A. No. 504 of 1993 it cannot be said that issue No. 4 is a comprehensive issue and would cover the said issues 1 and 2 also, referred to supra. Strong reliance was placed on Nedunuri Kameswaramma "s case (supra), wherein the Apex Court observed as hereunder:

Where the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was the mistrial which vitiates proceedings. The suit could not be dismissed on this narrow ground, and also there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion and neither party claimed that it had any further evidence to offer.

17. Further reliance was placed on Kunju Kesavan's case (supra), wherein the Apex Court observed that where both the parties understood what the issue in the case was, absence of issue cannot be said to lead to mistrial, sufficient to vitiate the decision.

18. Order XIV Rule 2 of the Code deals with the Court to pronounce judgment on all the issues, and the provision reads as hereunder:

2. Court to pronounce judgment on all issues:?(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues. (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to?

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other

issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

19. It is needless to say that this rule was substituted by Amendment Act 104 of 1976. It may be appropriate to have a look at Order XIV Rule 5 of the Code also which deals with power to amend and strike out issues, which reads as hereunder:

5. power to amend, and strike out, issues:?(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

20. Likewise Order XX Rule 5 of the Code deals with the Court to state its decision on each issue, which reads as hereunder:

5. Court to state its decision on each issue:?(In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefore, upon each separate issues, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

21. The Full Bench of this Court in Aziz Ahmed Khan Vs. I.A. Patel, , held that while pronouncing judgment, the Court to apply mind to the facts of the case and the points at issue and give a reasoned judgment thereon after duly evaluating the evidence adduced and after considering the contentions of the parties.

22. In the context of Order XX Rule 5 of the Code, the under noted decision also may be referred to Konkimalla Veeresham v. Pudduturu Vajramma AIR 1953 Hyd. 227, Varkey v. Devassay and Ors. AIR 1967 Ker. 132, Talengala Narayana Bhatta Vs. Narsimha Batta and Others, and Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato Da Cruz Pinto and Others, .

23. In the light of the clear language of the provisions referred to supra when by virtue of a judicial order, the issues had been specified and when the learned Judge proceeded to decide the matter whatever the other findings may be without advertng to such issues which had been framed, to contend that no prejudice had been caused and hence, the matter need not be remanded, in the considered opinion of this Court cannot be a sustainable contention. This is really a serious question, since virtually it will amount to non-application of mind of the learned Judge to a judicial order made by the self same Court framing specific issues, this would definitely vitiate the judgment. No doubt certain submissions were made that the findings in relation to the prior partition had been dealt with at length. Be that as it may, it is suffice to state that when the material issues 1 and 2 framed by virtue of the judicial order referred to supra had not been decided by the learned Judge, this Court is well satisfied that this would vitiate

the judgment at least for non-application of mind by the learned Judge.

Point No. 2:

24. Order XLI Rule 24 of the Code reads as hereunder:

24. Where evidence on record sufficient, Appellate Court may determine case finally:—Where the evidence upon the record is sufficient to enable the appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Strong reliance was placed on a decision of the Division Bench in B. Narsimha Reddy 's case (supra), wherein the Division Bench at para-10 observed as hereunder:

The failure of the learned Single Judge and the trial Court in giving specific findings on the other issues settled by the trial Court, by itself, is not a ground to set aside their judgments, since Rule 24 of Order 41 C.P.C. empowers the appellate Court to finally determine the suit, if the evidence on record is sufficient to do so. This suit was instituted in 1968. The evidence on record is sufficient to enable this Court giving finding on all the issues framed in the suit. Therefore, in view of Rule 24 of Order 41 C.P.C, instead of remanding the case for findings on the other issues, the findings on those issues are being given in this appeal itself.

26. In the present case it is not the question whether the whole evidence is available on record or not. The question is the non-consideration of the evidence available on record in the light of the issues 1 and 2 which had been settled by virtue of judicial order referred to supra. In the light of the findings recorded above, this Court is well satisfied that this is not a matter where the provisions of Order XLI Rule 24 of the Code can be called in aid of the contesting respondents so as to make a request to this Court that those issues can be taken into consideration by this Court and proper findings may be recorded by this Court as appellate Court. It is true that the language of Order XLI Rule 24 of the Code is wide enough, but however, in the light of the peculiar facts and circumstances, this Court is satisfied that this is not a fit case where this exercise can be made by this appellate Court.

Point No. 3:

27. Strong reliance was placed on Lokraj's case (supra), and submissions at length were made relating to the maintainability of the suit for partition. There appears to be some factual controversy between the parties. These factual controversies may have to be gone into at the appropriate stage whether the suit for partition was filed after grant or whether the same is maintainable in the light of the ratio laid down in the aforesaid decision or not. These are matters to be decided at the appropriate stage and hence, this Court is not inclined to express

any opinion relating to the said aspect giving liberty to the parties to advance these contentions before the trial Court.

Point No. 4:

28. In the light of the findings recorded above this Court need not, in detail, appreciate the other merits and demerits of the matter and also appreciate the other evidence available on record at length. This Court also is inclined to make an order of remand in the light of proposed parties A. Pentamma and N. Suseela, being impleaded as respondents in the appeal in A.S.M.P. No. 1946 of 2005 apart from the fact that the judgment and decree in question are vitiated for non-consideration of issues 1 and 2, which had been referred to supra.

29. Accordingly, the judgment and decree questioned in this appeal are hereby set aside and the matter is remanded to the learned Judge to decide the matter afresh keeping in view all the issues which had been framed inclusive of the issues which had been framed by virtue of the judicial order in I.A. No. 504 of 2005. Inasmuch as an order of remand is being made, the parties to bear their own costs.

30. At this juncture, Sri Narendra Reddy makes a request for early disposal on the ground that the litigation is a long pending litigation and the parties are fighting the litigation for sufficiently a long time. Keeping in view of the said fact, it is made clear that the learned Judge to dispose of the matter at the earliest point of time, in accordance with law, preferably within a period of six months from the date of receipt of this order.