
(2010) 04 AP CK 0068

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 1930 of 1993

Mr. Gannamani Anasuya

APPELLANT

Vs

Mrs. Parvathi Amarendra Chowdary

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20, 96
Constitution of India, 1950 — Article 136
Evidence Act, 1872 — Section 145, 58
Limitation Act, 1963 — Section 3
Registration Act, 1908 — Section 29(1)
Transfer of Property Act, 1882 — Section 45

Citation : (2010) 04 AP CK 0068

Hon'ble Judges : R. Kantha Rao, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : J. Venkateshwar Reddy, for the Appellant; T.S. Anand, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—This appeal u/s 96 of the CPC is at the instance of the defendants 2, 3 and 5 to 7 in the suit aggrieved against the judgment and decree in O.S.55 of 1985 dated 23-4-1997, on the file of Subordinate Judge at Ramchandrapuram, East Godavari decreeing the suit filed by the plaintiffs viz., the respondents 1 to 2 herein for partition in respect of plaint "A" and "B" Schedule properties and allotting the shares to the parties. The respondent No. 1 is defendant No. 3 and respondent No. 4 is defendant No. 4.

2. In brief, the emerging facts in this cause are that parties on both the sides are closely interrelated. For convenience sake, they are referred to as arrayed in the Court below. The respondents 1 and 2/the plaintiffs have filed the suit inter alia seeking for partition of the plaint "A" schedule property into 3 equal shares by metes and bounds and to allot two such shares to them and for partition of plaint "B" schedule properties into 9 equal shares by metes and bounds and to allot 4

such shares to them through the process of Court and directing the defendants 1 to 3 to render accounts in respect of poultry business, which was allegedly run in the plaint "B" Schedule property from the year 1968 till the date of filing of the suit and for awarding future profits and costs.

3. The defendant No. 1 is arrayed as respondent No. 3 whereas the defendant No. 4 is arrayed as respondent No. 4 in this appeal.

4. The plaintiffs are real brothers and are sons of defendant No. 1 whereas the defendant No. 2 is the wife of defendant No. 3 and defendant Nos. 5 to 7 are the children of defendants 2 and 3. Defendant No. 4 is the sister of defendant No. 1. The father of the defendant No. 1 and defendant No. 4 viz., Sri Narsimha Murthy died on 24-6-1971 whereas the mother predeceased him since died in about year 1947. It is stated in the plaint that during the life time of late Sri Narsimha Murthy, defendant No. 1 partitioned the joint family land under the registered partition deed in the year 1961 excluding the family house and a vacant site at Pulagurtha as joint. The defendant No. 2 is the daughter of natural brother of late Sri Narsimha Murthy. Her parents died when she was a minor and therefore late Narsimha Murthy brought her up and got married her with defendant No. 3. The defendant No. 3 happened to be a veterinary science student, and in view of his education qualifications, after obtaining B.VSc decree, the late Narsimha Murthy got the said marriage performed. After completion of the said degree, the defendant No. 3 joined the service in Veterinary Department and was working as B.D.O in Urban Development Project in Municipal Corporation of Hyderabad and settled at Hyderabad.

5. The defendants 2 and 3 sought assistance for establishing a poultry business at Hyderabad and in view of their sufficient experience in that business they requested late Sri Narsimha Murthy for investing the money with an understanding that the profits arising there from can be shared by late Sri Narsimha Murthy, defendant No. 1 and defendant No. 2 equally after meeting the necessary expenses apart from the interest for such investment at 15%. For that purpose, an extent of Ac. 7-14 gts of land was purchased at Attapur with the finances provided by late Narsimha Murthy and a poultry farm was started, which was developed substantially by providing several sheds, residential quarters and feed mixing plant etc., in the premises. The said business has become very profitable and later two manufacturing plants were installed in the very same premises with the profits arising from the said poultry business. Therefore, it is stated that all these properties have been treated as joint family properties. In the plaint there is a denial as to the claim that an extent of Ac. 1-00 in Sy. No. 335/3 in "B" Schedule was purchased by or belongs to defendant No. 3. Hence, the case of the plaintiff in short is that all this land and properties in scheduled "A" and schedule "B" apart from the aforesaid business being joint are liable for partition and they are entitled to the shares as set forth in the prayer.

6. The case of the defendant No. 1 in his written statement is a supporting the plaintiff. He expressed no-objection for partition of the plaint "A" schedule

properties and the aforesaid poultry business and other activities. Further, stating there has been investment in the said business, and therefore, after the death of the father, he is entitled to his shares. It was also claimed that the amounts are being sent once in a while to the defendant No. 1 after the death of his father towards the profits arising out of the business and towards interest. In this connection, the defendants sought to place reliance on the various correspondences, which took place between the parties and especially coming forth from the defendant No. 3.

7. The defendant No. 2 did not file a separate statement, but adopted the written statement filed by the defendant No. 3.

8. In the written statement filed by the defendant No. 3, it is admitted that there was a partition of joint family properties of late Narsimha Murthy in the year 1961 and there were no joint family properties. Further, the other natural brother Sri Kashiraman performed the marriage, since late Narsimha Murthy was an adopted son. It was stated that the allegation as against defendant No. 3 that he did not come from a well to do family was denied. The allegation that there was any advancement of money, sharing of profits or payment of any interest by late Narsimha Murthy and defendant No. 1 etc., are denied. There is denial to the allegations that the extent of Ac. 7-14 gts was purchased by the monies advanced by late Narsimha Murthy and defendant No. 1. The performance of marriage of three daughters from out of the trade fund is denied. The alleged G.P.A Holders of the plaintiffs is only set up by the defendant No. 1, who got this collusive suit filed to illegally gain the benefit. There was an inventory of the material after filing of the suit, at which point of time, the plaintiffs nor the said G.P.A Holder were present. No plea of a partnership has been made in the plaint in respect of the alleged business by the plaintiffs, whereas the allegation that there was any understanding between late Narsimha Murthy and defendants 1 and 2 in respect of the schedule "B" property, which is standing in the wife of defendant No. 2 are denied. It was stated that the land in Sy. No. 335/2 was acquired under registered sale deed dated 2-12-1970 in the name of defendant No. 2 and late Narsimha Murthy. Since there was shortage of funds, late Narsimha Murthy advanced as a well wisher a sum of Rs. 5,000/-, and therefore, he was shown as one of the vendee in the document, but later late Narsimha Murthy did not evince any interest in the said land, and therefore, the said late Narsimha Murthy has nothing to do with the said land or poultry farm or plastic business. Whereas these business activities were conducted with the own funds and there is absolutely no participation in any manner by late Narsimha Murthy or defendant No. 1. In fact defendant No. 2 with the assistance of the defendant No. 3 started the poultry farm in the year 1968 as sole proprietor. The said business incurred losses in the year 1971 and 1973 and it was temporarily closed. The defendant No. 2 has to obtain a personal loan of Rs. 46,500/- as sole proprietor from the State Bank of India with the defendant No. 3 as a guarantor and revived the business wherein the defendant No. 1 stood as guarantor. Yet the defendant No. 2 was unable to run the business profitably and admitted her

three daughters in the business under a partnership deed dated 6-3-1978. The said business could be carried on till 30-10-1982 and later it was closed. Later the firm M/s. Anasuya Plastics separately registered with the Registrar of Firms constituted the defendants 3 and 5 to 7 as partners under the deed dated 18-1-1982. The shed belongs to defendant No. 3 on a monthly rent of Rs. 1,000/- . In pursuance of a regular registered lease deed by the defendant No. 2 in favour of the firm on 29-11-1982 the other shed was taken on lease by defendant No. 5 for running the poultry business on a monthly rent. Hence, it is their case that there is absolutely no property liable for partition at the instance of the plaintiffs or other members nor they are entitled to any shares therein.

9. The defendant No. 2 submitted a separate written statement claiming that she does not have anything to do with the subject matter of the suit.

10. The defendants 5 to 7 who were later added as parties to the suit after getting themselves impleaded after coming to know that their properties are included in the suit and the receiver was appointed by court below as per orders in I.A. No. 200 of 1991 dated 22-7-1991. They submitted a separate written statement denying the allegations as contained in the plaint and supported the pleas and the case of the defendant No. 3. Further, it was added that in the first week of June 1973 defendant No. 1 claimed the balance amount of Rs. 41,015/- as on 30-5-1979 from defendants 2 and 3 and the defendants 2 and 3 came to Kakinada in 1979 for attending Pushkaram where the defendant No. 3 paid a sum of Rs. 10,000/- to defendant No. 1. Thereupon, the defendant No. 1 agreed to transfer half share in the immovable property in the land admeasuring Ac. 7-14 gts at Attapur village to defendant No. 2 and as differences arose, defendant No. 1 got filed the present suit purportedly through his son as G.P.A holder. Further, it was asserted that defendants 2, 5 to 7 constituted the firm Anasuya Plastics under a registered partnership deed dated 6-3-1978, who obtained an amount of Rs. 1,30,000/- from State Bank of India, Hyderabad for which the defendants 1 and 3 stood as guarantors. This itself shows that defendant No. 1 could not possibly gave any interest in the business of the firm. In the land acquisition proceedings by the State Government, where under an extent of ac.7-14 gts were acquired, a writ was filed by defendants 1 and 2 in W.P. No. 6143 of 1983 in this Court wherein the defendant No. 1 admitting that defendant No. 2 is a half share holder developed the land and constructed a big building including walls making huge investments. In regard to the firm M/s. Anasuya Plastics, it was stated that it was closed in the year 1982 and the defendant No. 1 has nothing to do with the said M/s. Ansuya Plastics, since it is a registered firm under a partnership deed dated 7-10-1982. However, for the purpose of obtaining the loan, since it was insisted upon that the consent of the owners of the land viz., defendants 1 and 2 were required, and therefore, the defendant No. 1 gave a letter of acceptance on 30-11-1982 stating that he has no-objection to the lease granted to M/s. Anasuya Plastics. Thereupon, an amount of Rs. 1,62,000/- was sanctioned by the A.P.S.F.C and later the defendant No. 1 withdrew his consent and the loan could not possibly be

fructified. The jurisdiction of the Court is also assailed. Further, it was stated that Sy. No. 335/1 does not belong to any of the parties, whereas the defendant No. 1 obtained permission for himself for construction in the land in Sy. No. 335/2 and that the sale deed dated 2-12-1970, the land in Sy. No. 335/3, to an extent of Ac. 1-00 is not the subject matter, hence, sought for dismissal of the suit and rejection of the claim of the plaintiffs.

11. Later on the defendant No. 3 has filed additional written statement raising a further plea that Ac. 7-14 gts, which was purchased under the sale deed on 2-12-1970 only covering Rs. 335/1 and 335/3 and the same does not form part of the sale transaction dated 2-12-1970. Therefore, the land in Sy. No. 335/1 belongs to a third party and the land in Sy. No. 335/3 is only to an extent of Ac. 1-00 and that of Defendant No. 7.

12. On these and other detailed allegations as contained in the aforesaid pleadings from both sides, the Court below framed the following issues:

1. Whether the plaintiffs are entitled for partition of the plaint "A" schedule properties into three equal shares by metes and bounds, and allot two such shares to them?
2. Whether plaintiffs are entitled for partition of plaint B schedule property into 9 equal shares by metes and bounds and allot 4 such shares to them?
3. Whether plaintiffs are entitled for separate possession of such shares in plaint A and B schedule properties by process of Court?
4. Whether plaintiffs are entitled for rendition of accounts by defendants 1 to 3 in respect of the poultry business since that is being run in B schedule property from the year 1968 onwards?
5. Whether plaintiffs are entitled for future profits?
6. Whether the suit must have been framed for dissolution of partnership and accounts to which Hyderabad court alone has got jurisdiction?
7. Whether the question of jurisdiction has to be decided as a preliminary issue?
8. Whether the 4th defendant has no interest in the subject matter of suit and thus, not necessary party?
9. To what relief?

Additional Issues framed on 30-8-1991

1. Whether the plaintiffs had no interest or right in the business of M/s. Anasuya Poultry farm and M/s. Anasuya Plastics?
2. Whether the first defendant received all the amounts due to him from defendants 2 and 3 for conveying the half share in the land of Ac. 7.14 kuntas in S. No. 335/2 of Attapur village?

3. Whether the 7th defendant is the absolute owner of Ac. 1.00 of land in Sy. No. 335/3 of plaintiff B schedule?
4. Whether items No. 2 of plaintiff B schedule was constructed by the 2nd defendant with her own monies?
5. Whether item Nos. 3 to 10 of the plaintiff B schedule in S. No. 335/2 were constructed by defendants 2 and 3?
6. Whether defendants 5 to 7 are liable to pay any damages?
7. Whether the suit is bad for misjoinder of causes of action?

Additional issues framed on 31-12-1992

1. Whether the boundaries mentioned in item No. 1 are not correct?
 2. Whether the extent of Ac. 1.00 in S. No. 335/3 of Attapur belongs to the 7th defendant?
13. Thereafter, the parties went into trial and on behalf of the plaintiffs the 2nd plaintiff was examined as PW.1 supported by other two witnesses viz., PWs.2 and 3 and Exs.A.1 to A.52 were marked. On behalf of the defendants, defendants 1 and 3 were examined as DWs.1 and 2 and they are supported by another witness DW.7 and Exs.B.1 to B.43 were marked. That apart, through the Commissioner, who was appointed in the Court below, Exs.C.1 to C.79 and X1 were marked.
14. At the initial stage, after filing of the suit at the instance of the plaintiffs as per orders in application I.A. No. 741 of 1985, dated 27-9-1995 an Advocate Commissioner was appointed, who seized the books of records from the defendants 1, 2 and 3. Thereupon, the said Advocate Commissioner visited the defendant No. 1 on 28-9-1995 at Pulugurtha village and visited the "B" schedule properties on 30-9-1995 and filed a report. It is to be noticed, as pointed out during the course of the arguments that at the time of inspection of the said Advocate Commissioner, it is only defendants 2 and 3 were present whereas the plaintiffs were not present. On an appraisal of the entire evidence and material on record, both oral and documentary, the Court below decreed the suit as stated above in the preceding para holding on issue No. 1 that the plaintiffs are entitled for partition of schedule "A" property into 3 equal shares with metes and bounds and allotted two shares to them. On this aspect, there has been no challenge on behalf of the appellants, even at this stage as well. Coming to the issues 2 to 4 and additional issues 1 to 4 and the further additional issue No. 2, it was held that the plaintiffs are entitled to 4/9 share out of the plaintiff schedule properties, and the plaintiffs and defendant No. 1 continued to be in possession of the joint family property even after partition as pleaded. Further, the defendant No. 1 and his father advanced huge amounts for the poultry farm and business, and therefore, the plaintiffs were entitled to share in plaintiff "B" schedule property and the defendant No. 2 is entitled to 1/3rd share in the

investment made by her. The plaintiffs are entitled for rendition of accounts in respect of plaint "B" schedule property from 1968 on the ground that the contributions of late Narsimha Murthy and defendant No. 1 by providing finance are as the partners/co-partners. Further, it was held that the defendant No. 7 is not the absolute owner of Ac. 1-00 of land in Sy. No. 335/3. Thus the plaintiffs have got right and interest in the business of M/s. Anasuya Poultry and M/s. Anasuya Plastics. The aforesaid issues 5 and 6 went in favour of the plaintiffs, whereas no answer was given on issue No. 7 on the ground that it has become infructuous. On the additional issue No. 6, this Court held against the plaintiffs, whereas the additional issue No. 7, which was framed later, remained unanswered. On the additional issue No. 1 which was framed later, it was held in favour of the plaintiffs and on issue No. 9, it was held that the plaintiffs are entitled for the decree as prayed for. Thus, ultimately the trial Court passed a preliminary decree by awarding costs. However, no relief has been granted as against the defendant No. 4 and the suit against the said defendant No. 4 was dismissed.

15. Aggrieved by the said Judgment and decree, which was dated 23-4-1993 earlier this very appeal was filed in A.S. No. 1930 of 1993 in this Court. However, this Court did not find in favour with any of the contentions urged on behalf of the appellants, and the same was dismissed as per the judgment and decree dated 29-10-1999, confirming the decree of the Court below.

16. Thereafter, the appellants filed further appeal to the Supreme Court in Civil Appeal No. 7318 of 2000, which was allowed as per the orders dated 17-5-2007 remanding the appeal to this Court for fresh disposal on the directions as pointed out therein. It is needless to mention that in regard to the issue No. 1 the Hon"ble Supreme court held as under:

The Hon"ble Supreme Court held that the question as to whether the business was a joint venture is not being a question of fact, the court should not exercise discretionary jurisdiction under Article 136. Insofar as the immovable property was concerned, having regard to the provisions contained in Section 45 of the Transfer of Property act, it was conceded that Narasimha Murthy had half share. At paragraph 21, the Hon"ble Supreme Court observed that the reasoning of the High Court in regard to Ex.B.8 was not acceptable, dealing of affairs by Defendant No. 1 will have a direct bearing on issues. An Admission by Karta H.U.F. would be relevant. There was an admission by Narasimha Murthy of the Hindu undivided family, who was managing the family property, that in terms of Section 58 of the Indian Evidence Act, admitted need not be proved, the document is admitted (Ex.B8) and having regard to the provisions of Section 145 of the Indian Evidence Act, the Hon"ble Supreme Court held that the relevant factors have not been considered. That no signatures as such is required on Ex.B.8 in view of the admission made by defendant No. 1, and such admission should have been taken into consideration. In paragraph 25 of the said judgment, there is a discussion about the partnership and Joint ventures and

that the conduct of the parties and how they dealt with the business of the partnership is relevant. ... in view Section 3 of the Limitation Act was relevant and D1 had to explain Ex.B.8 figures and that it was not for appellants... that it is for this Hon"ble Court to frame the points for determination in the light of the submissions made on behalf of the appellants and apart from this, issue Nos. 1 and 4 should be decided afresh.

17. After the remand, the main appeal was once again taken up and both sides were heard in detail going through the entire record. Sri J. Prabhakar, the learned Counsel appeared on behalf of Sri J. Venkateshwar Reddy for the appellants whereas Sri V.L.N.G.K. Murthy and T.S. Anand canvassed on behalf of the respondents. During the course of the arguments there has been much discussion across the Bar from both sides as to scope after remand and to what extent this matter requires to be gone into. There has been much variance in the approach even on the points that are required to be addressed. However, on the request made, the learned Counsel appearing for the appellant came forth with certain suggestions as to the points, which according to them, arises for consideration since there has been a finding that the business was a joint venture transaction, therefore the appellants seek the following questions for consideration.

1. Whether plaintiffs are entitled for partition of plaint B schedule property into 9 equal shares by metes and bounds and allot 4 such shares to them? (Issue No. 2 in suit).

2. Whether plaintiffs are entitled for rendition of accounts by defendants 1 to 3 in respect of the poultry business since that is being run in B schedule property from the year 1968 onwards? (Issue No. 4 in suit).

3. Whether the suit is not barred by limitation?

4. In case the business is said to be a joint venture, what are the terms of the joint venture and as to whether the plea that defendant No. 1 and the plaintiffs are entitled to interest in the investment at 15% per annum on the investment of late Narasimha Murthy together with share in the profits in the ration of 2/3rd to their branch and 1/3rd to defendant No. 2 can be sustained?

5. Whether the conduct of the parties is such that the joint venture is deducible and also whether the share and the interest can be decided by the conduct of the parties?

6. Whether the plaintiffs are entitled to have a share in Anasuya Poultry and Anasuya Plastics and also the land and house not covered by the sale deed dated 2-12-70 (Ex.B15) (covering land in Sy. No. 335/2 in favour of late Narasimha Murthy and D2) also the land in Sy. Nos. 335/1 or 335/3 in Attapur village though not covered by Ex.B.15 registered sale deed ... Late Narasimha Murthy and defendant No. 2).

18. Thereafter, once again the appellants came forth with different version by

narrating following points for consideration (revised) which are extracted below.

1. Whether plaintiffs are entitled for partition of plaint B schedule property into 9 equal shares by metes and bounds and allot 4 such shares to them? (Issue No. 2 in suit).
2. Whether plaintiffs are entitled for rendition of accounts by defendants 1 to 3 in respect of the poultry business since that is being run in B schedule property from the year 1968 onwards? (Issue No. 4 in suit).
3. Whether the suit is not barred by limitation?
4. Whether the conduct of the parties is such that the joint venture is deducible and also whether the share and the interest can be decided by the conduct of the parties, if so, what is the share of each of the parties?
5. whether the plaintiffs are entitled to have a share in the land, house, sheds not covered by the sale deed dated 2-12-1970 (Ex.B.15) (covering land in Sy. No. 335/2 in favour of late Narasimha Murthy and D2).
6. Whether it was a joint venture with the HUF of late Narasimha Murthy as KARTA and D-2?
7. What is the effect of the death of Narasimha Murthy on the joint venture?
8. Whether the plaintiffs claiming as members of HUF, can seek for partition and rendition of accounts?
9. Whether the firm M/s. Anasuya Poultry and M/s. Anasuya Plastics are not proper and necessary parties to the suit?
10. Whether the suit as framed is maintainable without seeking for declaration about the status of the said two firms?
19. The main contention on behalf of the appellant apparently runs on the same lines as set forth on a broader perspective denying about the existence of any joint-ness either by investment or by participation about the aforesaid businesses. Having regard to the findings of facts, which remained un-assailed in respect of schedule "A" property, it is not necessary to delve into the said aspect. Therefore, both the counsel did not make any effort to canvass on the said aspect, hence, as restricted by themselves the question now, which boils down is only to the schedule "B" the business and Ex.B8.
20. The case of the respondents/plaintiffs as put forth by the learned Counsel, taking us through the entire evidence and material on record is to the effect that even as per the findings of the Hon"ble Supreme Court in the order of remand, the poultry business was a joint venture and not a partnership and the determination of shares was left open. The applicability of the principles u/s 45 of the Transfer of Property and the concession which was stated to have been made on the earlier occasion before this Court is the another aspect. The plea that defendant No. 1 and late Narsimha Murthy had 2/3rd share in the business and

defendant No. 2 had 1/3rd share, was denied by the defendants in the written statement. However, the suit was decreed for 2/3rd. In view of the concession made and having regard to the Section 45 of the Transfer of Property Act, they are entitled to only half share. It is contended that the said concession is only made by the appellants themselves and not by the respondents/plaintiffs or even by defendant No. 1. The said concession as recorded by this Court in the earlier occasion in the judgment, however, no half share was granted and yet the decree of the trial Court was confirmed for 2/3rd. However, as per the observations of the Supreme Court since the appellants had conceded that they are entitled to only half share, which has remained undisturbed. Therefore, even taking into consideration the concession as not binding on the respondents/plaintiffs, it was stated that the defendant No. 2 cannot claim more than half, and since there is no such concession by the plaintiffs, therefore, the share of the plaintiffs cannot be restricted. It is submitted by the learned Counsel for the respondents, due to this reason alone the apex Court had directed this Court to go into the question of shares as well. However, it was stated that in regard to Ex.B.8, which was rejected by this Court on the ground that it does not contain the signature, the finding of the apex Court was that of reversal and further held that Ex.B.8 would operate as final settlement of accounts. However, it was found therein that the authenticity of Ex.B.8 cannot be questioned, yet in regard to the circumstances under which Ex.B.8 as come into existence and effect thereof can be gone into by this Court. The Ex.B.8 therefore does not operate as a settlement of accounts.

21. An attempt was made in regard to the objection of territorial jurisdiction on the ground that in view of Section 20 the CPC the finding cannot be assailed as there cannot be any deliberate inclusion of plaint "A" schedule property in the Court at Ramchandrapuram and there is no consequential failure of justice. As regards Ex.B.8, in view of the inconsistent stand taken amongst the defendants, the appeal filed by them altogether is not proper and sustainable. By taking us through the evidence in regard to the investments made, it was contended that the findings given earlier do not warrant any interference and there is ample basis to show that there is an investment as claimed by the plaintiffs.

22. Apart from these and other contentions as urged from both sides as already stated, there being no dispute or canvass either way in regard to the schedule "A", the actual disputed arena gets narrows down to the schedule "B" and entitlement by the parties. Further, it necessitates to consider the true nature and effect and the incidents which following the said document in regard to the schedule "B" properties. Thus, there being no dispute in regard to schedule "A" the plea set forth has to cover whether there was any such joint venture or business and if the parties as claimed were entitled to any shares or interest therein. This approach in fact dehorse the attempt to arrive at the points for consideration on a overall, rather it is an endeavour to restrict to the real controversy. Such mode is necessitated in view of the fact there has been variations at all levels all along and expressing dissatisfaction on the issues or the points for consideration as framed by the trial Court as well as by this Court.

This gets fructified from the observations of the Supreme Court in the order of remand while considering the merits of the case. Hence, going back to the case vis-?-vis the pleadings and evidence from both sides, it has to be seen how far and to what extent and who has to establish and what is the case.

23. In the plaint, after referring to inter se relation ship between the parties, it states that late Narsimha Murthy, who died on 24-6-1971 had properties partitioned under a registered partition deed of 1961 and the same was restricted only to the land properties keeping the family house and vacant sites at Pulgurtha as joint, which confined to remain as joint and enjoyed by the family. The late Narsimha Murthy preferred the 3rd defendant at the relevant point of time who was a student in veterinary science and thus being a promising boy though coming from a very poor financial background for alliance to the 2nd defendant. Ultimately, the 3rd defendant after securing qualification retired as Project Officer in the Urban Development Project, Municipal Corporation of Hyderabad and settled at Hyderabad. At this juncture i.e., in the year 1968, it is a case of the plaintiff that the 3rd defendant approached the 1st defendant and late Narsimha Murthy was making due investments in the poultry business at Hyderabad, since both the 2nd and 3rd defendants are having sufficient experience in view of their employment. The profits there from are shared by late Narsimha Murthy and 1st defendant and 2nd defendant equally apart from the interest on the investments made at 15% per annum. Accordingly, an extent of Ac. 7-14 gts in Attapur was purchased with the monies advanced by late Narsimha Murthy and 1st defendant in the name of late Narsimha Murthy and 2nd defendant and poultry farm was started and developed substantially whereby they raised residential quarters, bungalows and installed feed mixing plant and machinery. Even as per the plaint 2nd and 3rd defendants performed the marriage of 3 daughters spending huge amounts from the trade funds only. Therefore, the said business is joint family trade and business and the parties are having their respective shares. Though, there has been promise for settling the accounts and giving due shares, but since the same was not acceded to but being postponed, hence the suit.

24. The plaint was later amended after impleading the defendants 5 to 7 and states that these defendants have no right, title and interest of whatsoever nature and denying any investment by them and at the most they will be name lenders and nothing more.

25. The claim in respect of the said business and trade was denied in the written statement filed by the defendant 3 and it was adopted by defendant No. 1. It is their case that there was no such continued joint family. Once the partition has already taken place, the claim that the house property and any share in the poultry business being treated as joint property does not arise. It was pointed out that the property was not given to them by late Narsimha Murthy, but it is only due to want of funds at the relevant point of time.

26. Before proceeding, the actual conspectus within which this Court can venture

upon to consider the questions as stated above only the schedule "B" and the nature of business and the interest if any of the parties. It is apt to take note of the Judgment of the Hon"ble Supreme Court in Civil Appeal No. 7318 of 2000, dated 17-5-2007, which is an order of remand setting aside the earlier judgment of Division Bench of this Court dated 29-10-1999 for reconsideration on the arena as directed. After referring to the case on either side, it is observed as under:

There is no document to show that any partnership came into being by and between the parties and/or their predecessors in interest.

It is, however, not in dispute that after the suit was filed, an Advocate Commissioner was appointed for making an inventory of the poultry farm. It was stated that late Narasimha Murthy merely advanced a sum of Rs. 5,000/- and as a good gesture of goodwill, his name was included as one of the vendee along with Defendant No. 2 in the purchase of the property by reason of the said deed of sale dated 02-12-1970. According to Appellants, Narasimha Murthy had never shown any interest in the said property as a result whereof the business became exclusively theirs and the same was accepted by late Narasimha Murthy. Even if the said allegations are correct, Narasimha Murthy would only have ? share in the land covered by the said sale deed.

M/s. Anasuya Poultry Farm or M/s. Anasuya Plastics were the business concerns started by the Defendant No. 2 (Appellant No. 1 herein) with her own money and late Narasimha Murthy or Respondent No. 3 had no interest therein. It was furthermore contended that for carrying out the poultry business, a shed had been constructed by Defendant No. 2 by obtaining loans from the State Bank of India and neither Narasimha Murthy nor the Defendant No. 1 even objected thereto. The business, therefore, was a proprietary concern of the Appellant No. 1 herein. Although separate written statements were filed by the Defendant No. 4 and Defendant Nos. 5 to 7, it may not be necessary to consider the same. Defendant No. 4 in her written statement relinquished her share.

Thereafter, in para 19, it was further held:

So far as issue No. 1 is concerned, we are satisfied that the business was a joint venture and not the sole proprietary concern of the Appellant No. 1, as urged by Mr. Subba Rao.

We may furthermore notice that a concession was made before the High Court that so far as the immovable property is concerned, having regard to the provisions contained in Section 45 of the Transfer of Property Act, 1894, Narasimha Murthy had ? share therein. It is, thus, not necessary for us to go into the said question as correctness or otherwise of the said concession is not in question before us.

The Hon"ble Supreme Court However, observing on Ex.B.8, it was proceeded to the following effect:

However, it is difficult for us to accept the reasonings of the High Court in regard to Ex.B.8. Plaintiffs (Respondent Nos. 1 and 2) were claiming the property as members of the Hindu undivided family. Admittedly, the interest of the Hindu undivided family was being looked after by Narasimha Murthy and after his death by Defendant No. 1 (Respondent No. 3). Correspondences were exchanged by and between Appellant Nos. 1 and 2 only with Narasimha Murthy and Defendant No. 1 (Respondent No. 3). Yet again admittedly, Defendant No. 1 (Respondent No. 3) was the manager of the Hindu undivided family. His dealing with the appellant in regard to the affairs of the business will have a direct bearing in the matter of determination of the issues raised before us.

An admission made by a party can be used against him. When such admission is made by a Karta of the Hindu undivided family, who is managing the family property as well as family business affairs, the same would be a relevant fact. When a claim was made by the plaintiffs for rendition of accounts in the lis, issuance of a document purported to have been authored by one of the parties, in our opinion, was required to be taken into consideration.

In terms of Section 58 of the Indian Evidence Act, 1872, a thing admitted need not be proved. See *Shreedhar Govind Kamerkar Vs. Yesahwant Govind Kamerkar and Another*,

It is also a trite law that when in cross-examination a witness accepts the correctness of a document, the same would be relevant. A pleading in regard to existence of a document may be necessary for advancing the case of a party, but when a witness admits a document to be in his own handwriting without anything more, the effect thereof may have to be considered having regard to the provisions contained in Section 145 of the Indian Evidence Act in terms whereof the only requirement would be that his attention is drawn before a writing can be proved. These relevant facts have not been considered by the High Court. The High Court merely proceeded on the basis that Ex.B.8 did not contain any anybody's signature. If the Defendant No. 1 accepted the contents of the said document, which, according to him, were noted by him from the books of accounts, authenticity thereof is not in question, and, thus, even in absence of books of accounts, relevant pages whereof were found to have been torn. The High Court ought to have taken the same into consideration as well as the admission on the part of the Defendant No. 1 and the effect thereof. Such an admission could be taken into consideration both for the purpose of arriving at a finding in regard to the fact as to whether a full and final settlement of accounts had been arrived at, which was a relevant fact as also for determining the question of limitation.

There is no document in writing to prove partnership. Accounts had not been demanded by the plaintiffs or the defendant No. 3 for a long time. Even an oral partnership had not been proved. What was the subject-matter of the partnership had also not been considered by the High Court. A share in a joint venture, in absence of any document in writing, must be determined having

regard to the conduct of the parties. The High Court proceeded on the basis that the plaintiffs and defendant No. 1 had ? share in the property in terms of Section 45 of the Transfer of Property Act. If the said immovable property formed assets of the joint venture, the same would be an indicia to determine the shares held by the parties thereto. Ordinarily, the extent of an involvement made shall be the criteria for determining the share of the co-entrepreneurs. In absence of terms and conditions of the joint venture having not been reduced to writing, conduct of the parties how they dealt with affairs of the business would be relevant.

The High Court does not say that the concession made by the learned Counsel appearing on behalf of Appellants was incorrect. In a situation of this nature, particularly when the limitation issue required determination, Ex.B.8, in our opinion, should have received serious consideration at the hands of the courts below.

In terms of Section 3 of the Limitation Act, it is for the court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties. Such a jurisdictional fact need not, thus, be pleaded. In any event, the said evidence was admissible for the purpose of contradicting a witness, which being a relevant fact should have been considered in its proper perspective. If the contents of Ex.B.8 were accepted, it was not for the High Court to consider the consequences flowing therefrom, and, thus, but the fact whether the figure(s) contained therein could be verified from the books of account might not be very relevant. Whether, it would be in consonance with the pleadings of Appellants was again of not much significance if it can be used for demolishing the case of Plaintiffs and Defendant No. 1 if the figures contained in Ex.B.8 were accepted, it was for Defendant No. 1 to explain the same and not for Appellants. The High Court, in our opinion, thus, committed a manifest error in not taking into consideration the contents of Ex.B.8 in its proper perspective.

27. With the above backdrop, it was directed that the issues 2 and 4 require fresh consideration and leaving it open for this Court to formulate appropriate points for consideration. After going through the entire evidence and documents from both sides, it transpires that there is no evidence or material whatsoever to show exact constitution of initial partnership and there is a later constitution of firm under Ex.B.1 dated 6-3-1978 with the different partners. Whereas the Ex.B.8, which has been strongly sought to be placed reliance is an account memo in the writing of Defendant No. 1 for the period from 30-8-1968 and 30-6-1979 which is apparently subsequent to the Ex.B.1. Therefore, on the face of it, neither side has come forth properly with any cogent documentary evidence to show inception constitution. What exactly was the constitution of the firm, how it continued and who will be entitled to the shares or interest and the extent whatsoever nature. Apparently, all the parties herein are closely interrelated and do not involve any 3rd party from outside. Therefore, by taking into account several checkered events and the family relations inter se apart from the

properties as acquired, enjoyed and disposed off earlier or later, they might not have given a serious thought to put everything in black and white. However, surprisingly neither side have come forth with any other material, which could have been of some assistance like income tax returns filed before taxing authorities or a detailed account books except whatever the material, which was found in the inventory by the Commissioner. All those books apparently are for a period commencing from Ex.B.1 onwards i.e., starting from 1977-78 and all other documents covering the period up to 1982 and 1985. Therefore, the detailed aspects of accounts, no doubt, requires to be considered more aptly in detail and in depth in the final decree proceedings rather than at this stage. Suffice it to say that though we are conscious of the fact that there being no positive evidence coming forth, however as stated above surrounding circumstance, the chequered events, closer relationships of parties and admitted assistance from one to another including by Narasimha Murthy to the business, it can safely be said that all are one and together and not separate. The background of the defendant No. 3 that he comes from a very poor financial background is not denied. Therefore, it cannot be said that there could have been any investment from his side or from his family. Admittedly, he was educated and joined services and retired in a responsible position. It is not the case of the defendant No. 3 that out of the money earned from his regular salary as the government employee, he made any contribution. There is neither plea nor any material to support. Therefore, in the absence of any such contribution from his own side, a separate one, it cannot be said that there could have been neither any assistance nor participation by either late Narasimha Murthy de facto or de jure or by other members in the business activity, which was carried on. Therefore, leaving it open for the proper enquiry to be gone to determine the due amounts towards the shares of the parties respectively to which they are entitled in the later proceedings, we hold that ultimate finding as arrived at by the trial Court, though on a different reasons is correct and do not warrant any interference by this Court.

28. It is well established that the partnerships do exist without even a written deed or work details. Coming together of individuals is enough. The entitlement to a share and its extent can be determined as provided under the law or equally or as agreed to amongst the parties. Normally, difficulties do arise if such question arises amongst strangers. However, one family knowingly a joint one, the members /coparceners can open up a venture of the like nature. Where there is a meet of two minds or more than two and an intention or participation as such in the activities to be carried, there is a partnership. It is not necessary, as established already to have a deed even at the stage of inception. It can commence without a deed and other terms and conditions can be worked out and finalized later. Some times, the partners even continue without even a deed therefore and still the partners get the benefits of the profits out of the business carried out in the proportion to which they agreed upon or as the exigencies arise. The very conception of partners stands totally apart in comparison to other

legal entities where the legal formats are required for its existence coming into being. Therefore, it cannot be said that merely because there is no documentary evidence or any material, there is no partnership. Further, as stated already, the activities between or amongst the persons of a family or even a family stand again on a different paradoxical approach in compared to that of the others or with the outsiders.

The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges. It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by Section 29(1), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the partners. There are not many decisions of the High Courts on the point. In the few that there are the preponderating view is in support of the position which we have stated. In *Joharmal v. Tejaram Jagrup* ILR (1893) 17 Bom 235 which was decided by Jardine and Telang, JJ., the latter took the view that though a partner's share does not include any specific part of any specific item of partnership property, still where the partnership is entitled to immovable property, such share does include an interest in immovable property and, therefore, every instrument operating to create or transfer a right to such share requires to be registered under the Registration Act. In coming to this conclusion he mainly purported to rely upon an observation contained in the fifth edition of *Lidley on Partnership* at p. 374. This observation is not to be found in the present edition of *Lindley's Partnership* nor in the 9th or 10th editions which were brought to our notice. The 5th edition, however, is not available. The learned Judge after quoting an earlier statement which is that the "doctrine merely amounts to this that on the death of a partner his share in the partnership property is to be treated as money, not as land" says: "this obviously would not affect matters either during the lifetime of a partner - *Lindley, L.J.*, says in so many words that it has no practical operation till his death - or as against parties strangers to the partnership, e.g., the firm's debtors. "While it is true that the position so far as third persons are concerned

would be different it may be pointed out that in *Forbes v. Steven* (1870) 10 Eq 178, James V.C., has, as quoted by the learned Judge, said: "it has long been the settled law of this Court that real estate bought or acquired by a partnership for partnership purposes (in the absence of some controlling agreement or direction to the contrary) is, as between the partners and as between the real and personal property, and devolves and is distributable and applicable as personal estate and as legal assets. "Telang J., seems to have overlooked, and we say so with great respect, the words "as between the partners" which precede the words "and as between the real and personal representative of the partner deceased" and to have confined his attention solely to the latter. We have not found in any of the editions of Lindley's Partnership an adverse criticism of the view of the Vice-Chancellor.

29. After detailed discussions and on due appreciation of the evidence and record from both sides, the Trial Court has rightly come to the conclusion "that the poultry form business started in the year 1968 with the funds invested by D-1 and his father and the use of the plaint "B" schedule property for the business by D-2 or D-3 and D-5 to D-7 is not a ground to conclude that M/s. Anasuya Poultry Farmand M/s. Anasuya Plastics are the separate business concerns of D-2 and D-5 to D-7 or D-3 and D-5 to D-7 respectively".

30. In view of the detailed reasons given and due discussions with specific reference to each and every version of all the witnesses vis-?-vis the documents which are marked from both the sides, we are in total agreement with the findings arrived at by the Trial Court, which are perfectly justified. We are not once again going into the similar exercise of reappreciating such evidence and material, since nothing has been pointed out to come to a different conclusion or to varying with the reasons given by the trial Court, on the aforesaid issues as framed by the trial Court.

31. Coming to the plea of limitation that the suit is barred in view of Ex.B.8 pertaining to the period from 30-8-1968 to 30-5-1979 and the present suit having been filed in 1985, no doubt, squarely barred by limitation under the Limitation Act. It is also not out of place to mention here that except oral assertions about the business vendors and partnership and claiming any benefits therein, nothing else has been forthcoming later to 30-5-1979 to break cause of action, which has started already running, and therefore, the relief of accounts as sought for in respect of the said business ex facie gets barred. Therefore, the suit as has been filed and framed in respect of the later claim is squarely barred and to that extent the suit is liable to be dismissed.

32. Since the decree in regard to the other aspect, which is already granted by the trial Court and which is not being in serious dispute in regard to Schedule A does not require any variation, we hold that there are absolutely no merits in the above appeal.

33. The appeal is accordingly dismissed. No costs.