
(2007) 07 AP CK 0026
In the Andhra Pradesh High Court
Case No : AS No. 128 of 1994

Nemani Rajamani and Others

APPELLANT

Vs

Nemani Surya Kantham and Others

RESPONDENT

Date of Decision : 19-07-2007

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Section 34(1), 34(2)
Civil Procedure Code, 1908 (CPC) — Section 35A

Citation : (2007) 6 ALD 224

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

Bench : Single Bench

Advocate : C.C.S. Sastry, for the Appellant; M.V. Suresh, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This appeal is preferred by the unsuccessful plaintiffs in OS No. 93 of 1988 on the file of II Additional District Judge, East Godavari District, Rajahmandry, dated 30.8.1993, aggrieved by the decree and judgment made therein dismissing the suit for partition.

2. The appellants herein, as plaintiffs in the said suit, instituted the suit for partition of the plaint schedule properties into ten equal shares and allotment of four such shares to them taking good and bad qualities into consideration and for other appropriate reliefs.

3. The stand taken by the first plaintiff-first appellant is that she is the second wife of late Nemani Simhachalapathi Rao, a Registered Medical Practitioner, Rajahmandry, and plaintiffs 2 and 3 are the sons and the 4th plaintiff is the daughter of the said late Simhachalapathi Rao born through his second wife. It is the specific case of the plaintiffs that the 1st defendant, the 1st respondent in the appeal, is the first wife of the said Nemani Simhachalapathi Rao and respondents 2 to 4, defendants 2 to 4, are the sons, respondents 5 and 6, defendants 5 and 6, are the daughters of the said late Simhachalapathi Rao

through his wife -1st respondent, 1st defendant. It is also the case of the plaintiff that plaint A to D schedule properties are the self acquired properties of the said Nemani Simhachalapathi Rao and since he died intestate leaving the said properties, these parties are entitled to their respective shares.

4. The suit was resisted by the contesting respondents-defendants by filing a written statement in detail denying the alleged matrimonial relationship between Simhachalapathi Rao and the first plaintiff and also further denying that the said Simhachalapathi Rao died intestate and specific stand was taken that he died testate by executing a registered Will on 25.4.1983 and his date of death was 17.6.1983. In the Rejoinder filed no doubt slightly a different stand had been taken and on the strength of the respective pleadings of the parties, the trial Court having settled the issues, recorded the evidence of PWs.1 to 6, DWs.1 to 3, marked Exs.A1 to A27 and Exs.B1 to B6 and ultimately came to the conclusion that there is no acceptable evidence to prove the marital tie between the deceased Simhachalapathi Rao and the first plaintiff and further came to the conclusion that the stand taken by the plaintiffs that Simhachalapathi Rao died intestate is not the correct stand, but Simhachalapathi Rao died testate and in view of the same, the plaintiffs are not entitled to any share whatsoever in the plaint schedule properties. Incidentally relating to certain items, the nature of the properties and the other aspects also had been discussed. Aggrieved by the same, the present appeal had been preferred.

Contentions of Sri C.C.S. Sastry

5. Sri C.C.S. Sastry, learned Counsel representing the appellants-plaintiffs would submit that though the Will-Ex.B4 is said to be a registered Will executed by Nemani Simhachalapathi Rao, there are several suspicious circumstances surrounding the Will and these suspicious circumstances had not been taken note of and discussed by the trial Court in a proper perspective. The Counsel also pointed out to the evidence of DWs.2 and 3 apart from the evidence of DW.1 in relation to Ex.B4 and would submit that the said evidence is not sufficient to duly prove the Will-Ex.B4 and hence the findings recorded by the trial Court cannot be sustained. The Counsel also pointed out that the state of mind of the testator also had not been taken into consideration. Further, the learned Counsel would maintain that when clear and positive evidence is there relating to the marriage of the first plaintiff with the said Simhachalapathi Rao well supported by the evidence of PWs.2 to 6 and also Exs.A1 to A27, to doubt the very marital tie between those parties, definitely cannot be sustained. The Counsel also would maintain that several certificates relied upon and the documents marked would go to show that the children of Nemani Rajamani, plaintiffs 2 to 4, were admitted in schools by Simhachalapathi Rao showing himself as guardian and this aspect also was not properly considered; in the light of the voluminous documentary evidence available on record in relation to marital tie between PW.1 and the said Simhachalapathi Rao and also in the light of the nature of evidence, which had been let in relation to the Will-Ex.B4 in particular, the evidence of DWs.2 and 3,

even if the first plaintiff to be treated as the 2nd wife, may be she may not be entitled to a share, but the children would be entitled to the respective shares in the self acquired properties of the deceased-father and hence the findings recorded by the trial Court are liable to be set aside and the suit to be decreed accordingly. The Counsel in elaboration had taken this Court through the oral and documentary evidence available on record and would conclude that at any rate the suit atleast to be partly decreed.

Contentions of Sri M.V. Suresh

6. Sri M.V. Suresh, learned Counsel representing respondents 1 to 6, defendants 1 to 6, had pointed out that the very conduct of PW.1 in taking different stands and coming with different versions, one at the stage of original pleading, the plaint, another at the time of Rejoinder and further deposing in a different fashion as PW.1 would throw any amount of suspicion relating to the alleged marital tie i.e., the claim of PW.1, the first plaintiff, the 2nd wife with Simhachalapathi Rao. The Counsel also further pointed out that several other circumstances which would go to show that the stand taken by the first plaintiff that she is the second wife of late Simhachalapathi Rao definitely cannot be believed. The Counsel also further explained that it may be true that certain of the documents which had been marked as "A" series may go to show that these children of the first plaintiff were admitted by Simhachalapathi Rao, but by that itself a valid marital tie as such cannot be inferred and to prove even the second marriage, there is no acceptable evidence, and when that being so, even on the ground that these children are illegitimate children, the plaintiffs cannot put forth the claim for the relief of partition in relation to those children on the ground that these are the self acquired properties of Simhachalapathi Rao and hence they are entitled to their respective shares. The Counsel also further pointed out that the evidence of PWs.2 to 6 in fact is not concerned with the proof of the alleged marital tie between PW.1 and the deceased-Simhachalapathi Rao, but the probabilities which may point out in favour of such tie, especially in the light of the documents relied upon "A" series, these aspects are being relied upon and this cannot be taken as sufficient proof. The learned Counsel also would point out that though at a later point of time a different stand had been taken for the reasons best known to PW.1, in the original plaint specific stand was taken that DW.1 is the legally married first wife of the said Simhachalapathi Rao and PW.1, the first plaintiff, is the second wife of the said Simhachalapathi Rao. In the light of the said stand taken, no further proof is necessary in relation to an admitted fact-the valid marriage in between Simhachalapathi Rao and DW.1-the 1st defendant. The Counsel also pointed out that relating to the findings on the aspect of the nature of the properties and further would comment that even if certain items are taken as self acquired properties of the deceased-Simhachalapathi Rao, in the light of Ex.B4 which was duly proved by the evidence of DW.1, well supported by DWs.2 and 3, the scribe and the attesor, it is clear that the said Simhachalapathi Rao died testate and not intestate and in view of the same the plaintiffs cannot claim any share whatsoever in the plaint

schedule properties. The Counsel also pointed out that there are absolutely no suspicious circumstances since the evidence of DWs.2 and 3 is clear and categorical relating to all aspects inclusive of the state of mind of the testator at the time of the execution of the Will in question and the exclusion of the natural heirs. He further pointed out that the testator, for the reasons best known to him, might have thought of executing Ex.B4, the registered Will, in favour of 1st defendant, DW.1 and DW.1 alone and by that itself it cannot be said that Ex.B4 to be viewed with any suspicion and in fact in the light of the findings recorded by the trial Court, there cannot be any doubt whatsoever inasmuch as the said Simhachalapathi Rao died testate only, the plaintiffs are not entitled to any share whatsoever. The Counsel also placed strong reliance on the decision reported in Pentakota Satyanarayana and Others Vs. Pentakota Seetharatnam and Others, .

7. Heard the Counsel, perused the oral and documentary evidence available on record and the findings recorded by the trial Court.

8. In the light of the rival contentions advanced, the following points arise for consideration in this appeal:

1. Whether the findings recorded by the trial Court in relation to the status of the first plaintiff-PW.1 to be disturbed or to be set aside in the facts and circumstances of the case?

2. Whether the findings recorded by the trial Court in relation to Ex.B4 to be confirmed or to be disturbed in the facts and circumstances of the case?

3. If so to what relief, the parties would be entitled to?

Points 1 and 2:

9. For the purpose of convenience, both these points be dealt with together. The parties hereinafter would be referred to as plaintiffs and defendants 1 to 6 as shown in OS No. 93 of 1988 on the file of II Additional District Judge, East Godavari, at Rajahmandry.

10. The suit was filed for partition and separate possession of their respective shares. It was pleaded in the plaint as hereunder:

Plaintiff is the second wife of late Nemani Simhachalapathi Rao, a Registered Medical Practitioner, Rajahmandry. Plaintiffs 2 and 3 are the sons and the 4th plaintiff is the daughter of late Simhachalapathi Rao, born through the second wife. 1st defendant is the first wife of late Nemani Simhachalapathi Rao and the defendants 2 to 4 are the sons and defendants 5 and 6 are the daughters of late Simhachalapathi Rao by his first wife. Plaint A to D schedule properties are the self acquired properties of late Nemani Simhachalapathi Rao, the late husband of the 1st plaintiff and father of plaintiffs 2 to 4. Late Nemani Simhachalapathi Rao died intestate on 17.6.1983 possessed of A to D schedule properties. Under the provisions of the Hindu Succession Act, 1956, plaintiffs 1 to 4 and defendants 1 to 6 are each entitled to a share in the plaint A to D schedule properties equally.

The plaint schedule properties were not divided and the plaintiffs and the defendants 1 to 6 have been enjoying the properties all these years jointly and they were not divided by them and thus the plaintiffs are in joint possession of the plaint schedule properties with defendants 1 to 6. Plaintiffs raised a dispute for partition of the properties before mediators and the defendants 1 to 6 are postponing promising to divide the properties and give the plaintiffs their due shares. Apprehending that the defendants 1 to 6 may secret the family properties, they have to rush to this Court and file a suit for partition and also take an inventory of the properties by the Commissioner the properties lying in the residential house of the defendants 1 to 6 in Door No. 42-5-4 of Mangalavarapupeta, Rajahmandry. As the defendants 1 to 6 failed to partition the properties, this suit is filed. Defendants 7 to 20 are the tenants in the various house portions belonging to the family of late Simhachalapathi Rao. 21st defendant is a profonna defendant wherein late Nemani Simhachalapathi Rao had a bank locker for keeping the gold and silverware belonging to the family. Plaintiffs have come to know that the defendants 1 to 6 are trying to secret the properties after the death of Nemani Simhachalapathi Rao and hence plaintiffs do not wish to keep the properties any more joint and hence they are claiming partition of the plaint schedule properties and separate possession of the share in it. Defendants 1 to 6 are trying to take an upper hand and secret the properties for themselves. Late Nemani Simhachalapathi Rao had a locker in the Aryapuram Co-operative Urban Bank Ltd., in the name of the 1st defendant and as per the plaintiffs' information after the death of Simhachalapathi Rao, the gold and silverware which are mentioned in the D schedule have been put in the locker. Hence, the Secretary, Aryapuram Co-operative Urban Bank Ltd., Rajahmandry has been added as proforma party. Plaintiffs are entitled to profits on the plaint A to C schedule properties and they claimed the same from the date of it.

11. Defendants 1 to 6 filed written statement with the following averments:

The material allegations in the plaint are not true and correct and the suit is not maintainable under law. The surname of the plaintiffs 1 to 4 is wrongly and mischievously mentioned as Nemani instead of Kolluri. Their surname has to be amended accordingly. The plaintiffs, with a mischievous motive to claim certain rights in the plaint schedule adopted the surname Nemani in the short and long cause titles of the plaint. The name of the 2nd defendant is wrongly mentioned in the plaint and his correct name is Nemani Venkata Satya Anjaneya Vara Prasada Rao. The allegations in Para 3 of the plaint are not true. It is absolutely false to state that the 1st plaintiff is the second wife of Nemani Simhachalapathi Rao. It is further false to state that the plaintiffs 2 and 3 are his minor sons and the 4th plaintiff is her minor daughter through the 1st plaintiff. Late Nemani Simhachalapathi Rao never married the 1st plaintiff and he never lived with her and never treated her as his wife. Plaintiffs 2 to 4 were not born to the 1st plaintiff through late Nemani Simhachalapathi Rao. It is learnt that the plaintiffs are "Kalavanthulu" by caste, and it is learnt that the 1st plaintiff is unmarried and she is the daughter of one Kolluri Pullam Raju and that she was leading an

immoral and unchaste life with various people and she used to live by that profession. During the said course, she might have begot plaintiffs 2 to 4 through various people. Even if it is assumed without admitting that there is such intimacy between Nemani Simhachalapathi Rao and the 1st plaintiff like other persons, it cannot be said that the plaintiffs 2 to 4 were born to the 1st plaintiff through Nemani Simhachalapathi Rao. By any stretch of imagination, plaintiffs 2 to 4 cannot be said to be the children of Nemani Simhachalapathi Rao through the 1st plaintiff. The 1st plaintiff is being described as the daughter of Kolluri Pullam Raju but not as the wife of Nemani Simhachalapathi Rao in the documents. The allegations in Paragraph 4 of the plaint that the 1st defendant is the first wife of late Simhachalapathi Rao is not true. The 1st defendant is the sole wife of late Nemani Simhachalapathi Rao and defendants 2 to 6 are his children through the 1st defendant. The allegations in Paras 5 and 6 of the plaint are not true. It is absolutely false to allege that the plaint A and D schedule properties are the self acquired properties of late Nemani Simhachalapathi Rao. Item No. 1 of the plaint A schedule and the entire B schedule house properties are the Streedhana properties of the 1st defendant. Item No. 1 of plaint A schedule was purchased by the 1st defendant under the sale deed dated 14.5.1974 for a sum of Rs. 10,000/- from Smt. Pachineela Mangamma. Ever since then, she has been in possession and enjoyment of the same as of Streedhana property. Similarly, plaint B schedule properties were purchased by her with her own moneys for a sum of Rs. 2,000/- under a registered sale deed dated 11.2.1966 from Tatavarti Venkata Swamy and ever since then she has been in possession and enjoyment of this property as a Streedhana property. So, late Simhachalapathi Rao had no title or possession of item No. 1 of plaint A schedule or B schedule and they do not belong to him at all. It is true that item Nos. 2 to 5 of plaint A schedule and the plaint C schedule properties are self acquired properties of late Nemani Simhachalapathi Rao. Plaint D schedule properties are not owned by late Nemani Simhachalapathi Rao. It is absolutely false to state that late Simhachalapathi Rao died possessed of 50 sovereigns of gold and kept them in the Aryapuram Co-operative Urban Bank Ltd., Rajahmundry and silverware. He did not die possessed of gold at all. Whatever gold jewellery which was in the residential house and on the person of the 1st defendant and which are in the bank locker, they all belong to the 1st defendant and it is her Streedhana property. The plaintiffs obtained an ex parte commission and got the residential house of these defendants inventoried, even though no claim for partition in respect of household articles is made in the plaint. Plaintiffs in order to harass these defendants, got the Commissioner appointed and got the house inventoried. As those articles are not included in any one of the schedule, these defendants are not answering in this written statement with regard to the articles they were inventoried by the Commissioner and if the plaintiffs have any steps in future for inclusion of those items in the suit schedules, these defendants reserve their right to answer those allegations by filing an additional written statement. Plaintiffs are not entitled to claim any share in respect of the properties possessed by late Nemani Simhachalapathi Rao by the time of his

death for the following reasons: Late Nemani Simhachalapathi Rao died on 17.6.1983, but it is absolutely false to state that he died intestate. The said Nemani Simhachalapathi Rao executed a registered Will dated 25.4.1983 bequeathing all his movable and immovable properties in favour of the 1st defendant. The said Will was executed by him in a sound and disposing state of mind and it is his last Will and testament. He lived for a period of two months after the execution and registration of the said Will. So, the 1st defendant is the sole legatee died possessed by late Simhachalapathi Rao. So, the plaintiffs cannot-make any claim in respect of the properties possessed by late Nemani Simhachalapathi Rao, as he died intestate. Even according to the allegations made in the plaint, without admitting the same, the 1st plaintiff is alleged to be the second wife of late Nemani Simhachalapathi Rao. Nemani Simhachalapathi Rao is a Hindu by religion and he professed Hinduism till his death. No second marriage as pleaded by the 1st plaintiff is permissible under Hindu Law. Even if it is assumed, without admitting that there is any marriage between them, it is void under law as the marriage between Simhachalapathi Rao and the 1st defendant was subsisting by the time of the alleged marriage of the 1st plaintiff with Simhachalapathi Rao and so the 1st plaintiff or her children cannot claim any rights in the properties of late Nemani Simhachalapathi Rao. These defendants further submit that even if it is assumed for argument sake that Simhachalapathi Rao married the 1st plaintiff and treated her as his second wife, the children to her can at best to be considered as illegitimate children of Simhachalapathi Rao and they have no right of succession in the properties of late Nemani Simhachalapathi Rao, in view of the Succession Act, 1956. Therefore, in any view of the matter either all or any of the plaintiffs are not entitled to claim any share in the plaint schedule properties. The allegations made in Paragraphs 8 and 9 of the plaint are not true. Plaintiffs were never in possession and they are not even in constructive possession of any of the plaint schedule properties. It is false to allege that the plaintiffs and defendants are in joint possession and enjoyment of the properties jointly. The said allegations were made only to avoid payment of ad valorem Court fee on the reliefs claimed by them. The payment of fixed Court fee u/s 34(2) of A.P.C.F. and S.V. Act is not correct Plaintiffs ought to have paid Court fee u/s 34(1). It is false to allege that the plaintiffs raised dispute for partition of the properties before mediation against these defendants and these defendants are postponing the same. There is no such dispute before mediators and there was no such demand. Plaintiffs did not issue even a notice prior to the filing of the partition. This fact itself belies the alleged mediation. The various allegations made in Para 10 of plaint regarding the tenants in occupation of each house are correct to certain extent. So far as item 2 of the plaint A schedule house is concerned, only a small portion in that house was let out to the 11th defendant and the remaining portion is in the occupation of these defendants and they are residing in the same. Allegations in Paragraphs 11 to 13 of the plaint are not true. Late Nemani Simhachalapathi Rao had no locker in the bank. It is true that the 1st defendant had a locker in her name along with the 2nd defendant and she used to keep

some of her documents and her Streedhana jewels in the said locker. So, the plaintiffs cannot seek for partition of the D schedule properties. The quantum of gold and silverware mentioned in the D schedule is exaggerated. All the items mentioned in D schedule are not existing and some of the silver and gold articles belong to the 1st defendant and they are not partitioned. Therefore, they prayed to dismiss the suit with compensatory costs u/s 35A CPC.

12. Defendant No. 21 also filed a separate written statement to the effect that the 1st defendant held a locker in her name in the Aryapuram Co-operative Urban Bank. Late Simhachalapathi Rao does not have a locker in his name as stated in the plaint and the Commissioner appointed by the Court made inventory and this defendant is not a necessary party to the suit.

13. The plaintiffs filed a Rejoinder with the following averments:

The 1st plaintiff is the wife of Nemani Simhachalapathi Rao and the other plaintiffs are their sons and daughter. The averments in Para 3 of the written statement are not correct. Nemani Simhachalapathi Rao married the 1st plaintiff as per Hindu custom. The marriage took place in Door No. 10-4-4, Dasarivari Street, Rangarejpeta, Rajahmandry. Sri Late K. Ramam and his assistant one Sri K.S.N. Murthy, officiated as Purohita at the time of marriage. A number of people attended the marriage of whom some of the persons are A. Suryanarayana, M. Vir Raju, K. Ratnu, Ch. Bangaramma, N. Veeramma, V. Bapi Raju and K. Subba Raju and a large number of others also attended the marriage. The marriage consummated only after three months. The marriage took place on Korukonda Ekadasi day i.e., on 2.2.1966. It is admitted that the 1st plaintiff is the daughter of one Pullam Raju, a Vysya gentleman and her mother's name is Manikyam. It is preposterous to contend that the 1st plaintiff was living in immoral and unchaste life with various people and she used to live by that profession. It is absolutely false to state that the plaintiffs are Kalavanthulu by caste and profession. Nemani Simhachalapathi Rao during his lifetime and the 1st plaintiff lived as husband and wife and they have begot the children who are the other plaintiffs. The births of plaintiffs 2 to 4 are registered in the Municipal Office, Rajahmandry, on the application of Nemani Simhachalapathi Rao. The 4th plaintiff Nemani Suseela Rani's birth also is registered on the application of Simhachalapathi Rao and in all these applications Simhachalapathi Rao described himself as father and Nemani Rajamani is their mother. Plaintiffs 2 and 3 joined in Victoria Aided Upper Primary School, Gantalamma Street, Rajahmandry, by late Simhachalapathi Rao, and later they are joined by him in Municipal High School, Rajahmandry, near Pushkarala Revu. Nemani Suseela Rani is also joined by Simhachalapathi Rao first in the Victoria Aided Upper Primary School, Rajahmandry, and later in Municipal High School, Rajahmandry. It is only Simhachalapathi Rao that joined in this school and throughout acted as father and guardian for joining them in the schools. The averment in Para 3 of the written statement that the 1st plaintiff is being described as daughter of Kolluri Pullam Raju, but not as the wife of Nemani Simhachalapathi Rao in the

documents is not correct and it is a deliberate act that might have been committed by interested parties to put the plaintiffs to wrongful loss and the said averments are not admitted. The 1st defendant's marriage with Simhachalapathi Rao is not admitted, as per the information and knowledge of the 1st plaintiff, the 1st defendant Suryakantham is not the legally wedded wife of Simhachalapathi Rao. The averments in Para 4 of the written statement are trumpeted up for the purpose of the suit. It is false to state that A to D schedule properties are not self acquired properties of late Nemani Simhachalapathi Rao. The 1st defendant had no independent financial status to acquire any properties. She has not got any nucleus property of her to acquired properties later. She is the daughter of Kolli Suryanarayana and Kolli Narayanamma and Kolli Suryanarayana is only an employee in a fruits shop in the wholesale fruit market at Rajahmandry. He is no more. Suryanarayana is not a man of property. It is false to state that item No. 1 of the plaint A schedule and the entire B schedule properties are the Streedhana properties of A1. The alleged sale deeds are only a make believe documents. The moneys for the purpose of these properties belong to late Simhachalapathi Rao and therefore, these properties are the properties of late Simhachalapathi Rao. The averments made in Para 5 of the written statement with regard to the B schedule properties are not correct. The gold and jewellery in the house also belong to family but not to the defendants at all. The averments in Para 6 of the written statement are absolutely false. The alleged Will dated 25.4.1983 is not valid under law. The said Will does not bind the plaintiffs at all. Late Simhachalapathi Rao cannot ignore the existence of the plaintiffs and dispose of his properties. It is not admitted that Simhachalapathi Rao executed a Will in a sound and disposing state of mind. Simhachalapathi Rao fell sick one year before the death. He was having kidneys trouble and his kidneys are not working properly. Late Simhachalapathi Rao went blind since six months before his death. He can neither write nor read since six months before his death. As a matter of fact he was taken to Anaparthi to be examined by Eye Specialist by Kolluri Rama Gopala Rao and Eye Doctor at Anaparthi treated him for sometime during his lifetime. Therefore, the alleged Will is not true and binding on these plaintiffs. The allegations in Para 7 of the written statement are not correct. The proposition of law stated by the defendants so far as the rights of legitimate children is not correct. The averments made in Para 8 of the written statement are not correct. A dispute has been raised for partition of the family properties after the death of Simhachalapathi Rao before M/s. Vangara Subba Rao, M. Ranga Viswanadham, the nephew of Simhachalapathi Rao and others. The Court fee paid is correct and ad valorem Court fee need not be paid. The averments in Paras 10 and 11 are not correct. The 1st defendant had no Streedhana properties. Therefore, the plaintiffs submit the Court may be pleased to pass a decree as prayed for.

14. On the strength of the pleadings of the parties, the following issues were settled:

1. Whether the 1st plaintiff is the legally wedded wife of late Nemani

Simhachalapathi Rao and her marriage is valid under law?

2. Whether the plaintiffs 2 to 4 were born to late Nemani Simhachalapathi Rao through the 1st plaintiff and they are his legitimate children?

3. Whether late Nemani Simhachalapathi Rao executed a registered Will dated 25.4.1983 and the said Will executed by him, is true, valid and binding on the defendants?

4. What are the properties owned and possessed by late Simhachalapathi Rao by the date of his death?

5. Whether item No. I of the plaint A schedule and the entire B schedule properties are self-acquisitions of the 1st defendant?

6. Whether Simhachalapathi Rao owned D schedule properties and the D schedule properties are the Streedhana properties of the 1st defendant?

7. Whether the plaintiffs are entitled to partition of A to D schedule properties? If so, to what extent?

8. Whether the Court fee paid is not correct?

9. Whether the defendants 1 to 6 are entitled to compensatory costs u/s 35A of C.P.C.?

10. To what relief ?

15. As already referred to supra, PWs.1 to 6 were examined and Exs.A1 to A27 were marked on behalf of the plaintiffs. DWs.1 to 3 were examined and Exs.B1 to B6 were marked on behalf of the defendants.

16. While answering issues 1 and 2, the trial Court had discussed the oral and documentary evidence available on record in detail and came to the conclusion that PW.1 failed to establish that there was marriage between her and late Simhachalapathi Rao. The trial Court also further proceeded to discuss with issue No. 3 on the aspect of execution of the registered Will-Ex.B4 and discussed the oral and documentary evidence available on record and came to the conclusion that Ex.B4 was validly proved and further answered the other issues also and ultimately came to the conclusion that the suit is liable to be dismissed with costs. Hence, the present appeal had been preferred.

17. PW.1, the first plaintiff deposed that plaintiffs 2 to 4 are her minor children and she filed the suit for partition since the plaint schedule properties are the joint family properties of the family and she was married with Simhachalapathi Rao on 2.2.1966 at her parents residence. She had also given the names of Purohits and she stated that amongst them, Kakarala Ramam died. This witness also deposed that several neighbours also in the street attended the marriage and the other people in the street and Rajahmandry Town also attended the marriage. This witness also deposed that the 1st defendant-Suryakantham is the kept mistress of her husband and the said Suryakantham was a widow and she

lost her married husband and as she had been living as kept mistress of her husband, she was treated almost as his wife. So the 1st plaintiff gave the address of 1st defendant in the plaint as the wife of her husband because of her long association with him. PW.1 also deposed that the married husband of Suryakantham was one Chinthaginja Narayana Murthy. 1st defendant-Suryakantham is the daughter of Kolli Suryanarayana and his wife Narayanamma. She had given certain particulars and details and she also deposed that she led the married life with her husband till his death and after his demise, she came down to Rajahmundry to her younger brother Kolli Venkataswara Rao and lived in his house. Defendant No. 1's father Kolli Suryanarayana was an employee in Fruit Stall at Rajahmundry. The mother of Suryakantham was attending to polishing aluminum anklets. 1st defendant also, after the demise of her married husband, was attending to the polishing of aluminum anklets along with her mother. The parents of 1st defendant had no other properties. Defendant No. 1-Suryakantham begot three sons and two daughters through her husband and they are defendants 2 to 6. This witness also deposed that her eldest son was admitted in Victoria Aided Upper Primary School, Gantalamma Gudi Street, Rajahmundry and Ex.A1 is the Study Certificate issued by the Head Master and Madhusudhana Rao is her second son and he also studied in the same school, and her daughter Suseela Rani also studied in the same school and Exs.A2 and A3 are the Study Certificates. These documents Exs.A1 to A3 were marked subject to objection. This witness also deposed that her husband, the father of the children, got them admitted in the school. Later their father Simhachalapathi Rao admitted them in Municipal High School. Exs.A4 to A6 are the Birth Certificates issued by the school authority. Ex.A7 is the positive photograph of her husband Simhachalapathi Rao and daughter Suseela Rani. This witness also deposed that when her daughter attained puberty, they had taken Ex.A8 photographs. This witness also deposed about her husband having interest in Horoscope and Ex.A9 is the slip, on which her husband noted the details relating to the time of birth, nakshatram, padam and other aspects. She had also deposed about the bunch of house tax receipts Ex.A10 and the Radio licence showing her husband's name with the place of residence-Ex.A11. The Photostat copy of the ration card is Ex.A12, which was marked subject to objection. She also deposed about the voters list Ex.A13 and the entries Ex.A14. PW.1 also deposed that her husband was not doing well for sometime and was ailing with Blood Pressure, Sugar, and Kidneys trouble and was having defective sight and she had narrated certain details in relation thereto. This witness also deposed that her deceased husband Simhachalapathi Rao was taken to Tirupati by 1st defendant-Suryakantham and her eldest son 2nd defendant. The 2nd defendant Varaprasada Rao was a student of Pharmacy at Tirupati by then. The body was cremated at Tirupati itself three days after his death. She could learn about the death of her husband after five days after his death. The neighbours around the house of the 1st defendant informed about the death after the return of Suryakantham and her son Varaprasad. Immediately on learning about the death, PW.1 went to 1st defendant and questioned her why

the death was not intimated immediately. 2nd defendant-Varaprasada Rao told her that the death was so sudden and as there was no possibility to bring him back, they cremated the dead body there itself. She also deposed relating to certain details of performance of obsequies and giving of some ashes and Asthikalu. This witness also deposed that her late husband was not able to see the objects beyond one yard distance. He was not able to speak freely since six months prior to his death and he was not able to identify the persons by vision and he was able to identify them by voice and family members alone could follow his slurring speech, but outsiders were unable to follow. She had also taken specific stand that it is false to state that her late husband had signed the alleged Will dated 25.4.1983. She had also deposed certain particulars and certain details relating to properties. In the cross-examination she had deposed about the surname and other details of her family and certain particulars relating to the caste of her father and her mother. PW.1 admitted that it is fact that she got mentioned in the plaint that the 1st defendant is the first wife of her deceased husband and she is the second wife. She also explained that she termed 1st defendant as wife because she lived with her late husband as wife till his death. 1st defendant-Suryakantham is 15 or 20 years elder to her. This witness also deposed that 2 or 3 years after the marriage with the deceased husband, 1st defendant demanded item 2 of plaint A schedule house, the house where she residing, to be conveyed in her favour, and on that account there were disputes between PW.1 and her husband and 1st defendant-Suryakantham, and her husband thrown her out of the house once or twice for her demand. In that connection her deceased husband informed her about 1st defendant-Suryakantham joining him without marriage on the plea of providing her food and shelter. This witness also was cross-examined relating to the date of marriage, the other particulars, the age of the children and several suggestions put to this witness also had been denied.

18. PW.2 deposed that one Kakarla Ramam was the Purohit, who had performed the marriage of PW.1 with one Nemani person, but he cannot give the bridegroom's name, and he assisted Kakarla Ramam in that marriage function and the marriage had taken place about more than 20 years ago. This witness also deposed that the said marriage was performed by the side of Goddess Adi Laxmi Temple and certain further particulars also had been deposed by this witness and he was cross-examined at length.

19. PW.3, the Headmaster of the main Municipal High School, Rajahmandry, deposed in relation to the school records which had been produced in pursuance of the summons issued to him. This witness deposed about the 4th plaintiff being admitted to the 8th class in the year 1982-83 on 17.6.1982 and at the time of her admission, the student's father Nemani Simhachalapathi Rao had filed the application and signed as father and Ex.A17 is the application form. The then Headmaster made an endorsement permitting the admission and this witness also deposed in relation to Exs.A19 and A20 and further deposed relating to the entire file containing Exs.A17 to A20.

20. PW.4, the Record Assistant of Municipal High School, deposed that the 2nd plaintiff joined Municipal High School in 8th class in the academic year 1981-82 and at the time of his admission, Nemani Simhachalapathi Rao signed the application form on 13.6.1981 and signed as the father of the applicant and he had also deposed about Ex.A.21. This witness also deposed about Ex.A22 and the 3rd plaintiff Nemani Madhusudhana Rao also joining the High School on the same day and further deposed about the particulars specified therein. PW.5 deposed that he knows Nemani Simhachalapathi Rao and also the 1st plaintiff and they are his neighbours and he knows the marriage between Simhachalapathi Rao and Nagamani. This witness also deposed that it had taken place about 25 years ago and the said marriage was performed at the house of Rajamani and she begot two sons and a daughter through Simhachalapathi Rao. This witness was also cross-examined. PW.6 deposed that he is working in Victoria Aided Upper Primary School, Rajahmandry, and he had attended the Court in pursuance of the summons received from the Court along with the Admission Record and admission forms of the school. Plaintiffs 2 to 4 were admitted in the school on 2.7.1976, 2.7.1976 and 3.7.1976 respectively. The father's name of plaintiffs 2 to 4 had been shown as Nemani Simhachalapathi Rao in the admission forms. He had also deposed in detail in relation to Exs.A26 and A27. This witness also was cross-examined.

21. If the evidence of 1st plaintiff as PW.1, supported by the evidence of PWs.2 and 5 in particular, scrutinized, though PW. 1 deposed several details relating to the marriage and the person who had attended the marriage inasmuch as Purohit is said to be not alive, the said Purohit could not have been examined, it is pertinent to note that the evidence of PW.2 is as vague as vagueness. He was unable to give the name of the person who actually married except referring to the surname and he had also given the place of marriage as besides Adi Laxmi Temple, whereas the evidence of PW.5 appears to be otherwise. None of the neighbours and none of the other relatives, who are said to have attended the said marriage, had been examined. In the light of these discrepant evidence of PWs.2 and 5, no doubt coupled with the evidence of PW.1, the trial Court recorded reasons in detail and came to the conclusion that PW.1 was not successful in establishing the marital tie. It is no doubt true that the evidence of PWs.3 to 5 is available on record and voluminous documentary evidence had been placed before the Court to show that Nemani Simhachalapathi Rao made the admissions of the children into the school and his name was recorded as the person who had admitted these children in the school. This Court is not inclined to express any further opinion relating to this aspect of the matter for the reason may that in the facts and circumstances the 1st plaintiff could have been a permanently kept mistress of Simhachalapathi Rao and may be that out of the said relationship and due to affection, Simhachalapathi Rao might have figured by showing his name in the said application forms. When PW1 miserably failed in establishing the marital tie, the findings recorded by the trial Court cannot be found fault with in this regard.

22. It is pertinent to note that PW.1 having taken a specific plea in the plaint at the earliest point of time that DW1, the 1st defendant, is the first wife of the said Simhachalapathi Rao, for the reasons best known to her she had shifted her stand in the Rejoinder and while deposing as PW.1, she had taken a peculiar stand that she was already married to another person and became widow and she came to this family for the sake of food and shelter and thus DW1 in fact is the permanent kept mistress of the said Simhachalapathi Rao. The shifting stands of PW.1 had been discussed in detail by the trial Court and the same was disbelieved especially in the light of the specific stand taken at the earliest point of time in the original plaint.

23. Apart from this aspect of the matter, the evidence of DW.1 is available on record and further there are certain admissions made by PW.1 herself to show that the 1st defendant is the legally wedded wife of Simhachalapathi Rao. Since she herself deposed that the said branch did the obsequies ceremonies, and DW.1 and one of her sons cremated Simhachalapathi Rao at Tirupati, this aspect also may have to be taken into consideration. No doubt PW.1 explained that subsequent thereto she had gone to DW.1 and questioned about the non-intimation relating to the death of her husband. Be that as it may, suffice it to state that in the light of the clear findings recorded by the trial Court on the aspect of the failure on the part of PW.1 to establish the marital tie, this Court is of the considered opinion that for want of evidence the trial Court had come to the correct conclusion and hence the said findings need no disturbance at the hands of this Court.

24. The next question which had been argued in elaboration is in relation to Ex.B4 and the validity thereof. The evidence of DWs.1 to 3 is available on record. Ex.B1 is the registration extract of the sale deed dated 19.3.1983; Ex.B2 is the registration extract of sale deed dated 23.6.1966; Ex.B3 is the registration extract of the sale deed dated 21.5.1974 and Ex.B5 is the registered General Power of Attorney executed by Nemani Simhachalapathi Rao in favour of N.V. Anjaneya Vara Prasada Rao and Ex.B6 is the relevant entry at page 53 of the thumb impression register of Sub-Registrar's office bearing the signature of Simhachalapathi Rao, dated 21.3.1983. It is needless to say that Ex.B4 is the controversial document - registered Will -said to have been executed by Nemani Simhachalapathi Rao on 25.4.1983.

25. It is true that in the light of the findings recorded above, this question need not be dealt with in elaboration for the reason that even if for want of evidence, assuming for a moment, Ex.B4 not to be believed, the plaintiffs' branch would not be entitled to the shares claimed by them and at the best the branch of the defendants i.e., DW.1, alone would be entitled to their respective shares. Be that as it may, now in the light of the evidence of DWs.2 and 3, it may have to be seen whether there are any suspicious circumstances surrounding this Will.

26. The Will Ex.B4 is a registered document. It is no doubt true that the registration of the Will by itself cannot attach any serious solemnity, but it is also

one of the circumstances which may have to be taken into consideration. The evidence of DW.1 is clear and categorical. DW.1 deposed about her relationship with Simhachalapathi Rao, the death of Simhachalapathi Rao at Tirupati on 17.6.1983 and about the details of her children and about her marriage at Rajahmundry on the specific date. This witness also deposed that when she was 9 years old, she married her maternal uncle's son Chinthakinda Narayana Murthy. He lived 3 or 4 years after the marriage and died. Then she was married to Simhachalapathi Rao on 24.11.1955. She also deposed that after her marriage, in 1966 she purchased B schedule property and she filed the registration extract of the sale deed. This witness also deposed about Exs.B1 to B3 and also Exs.B5 and B6. Specific questions were posed whether by the date of execution of Ex.B4-Will, her husband Simhachalapathi Rao was having sound disposing state of mind and she had given convincing answers in relation thereto. This witness was cross-examined at length, but she had specifically denied the signatures on Exs.A17 to A22. She had narrated all the details relating to execution of Ex.B4 and she also deposed in cross-examination that her husband was suffering from Diabetics and Blood Pressure, but she denied the suggestion that he was suffering since 5 years prior to his death. She had given cogent answers relating to the health condition of her deceased husband.

27. DW.2 is the licensed Document Writer, who had deposed about Ex.B4, which was written at his house between 9 to 10 a.m., about 9 years back. After perusing the document, the witness deposed that he had scribed the document Ex.B4 on 25.4.1983. On that day Simhachalapathi Rao and his eldest son came to his house. Simhachalapathi Rao gave instructions for writing Ex.B4 and as per his instructions he scribed Ex.B4. After completing writing of Ex.B4, the contents were read over to Simhachalapathi Rao and he admitted the contents read over and then he signed Ex.B4 in his presence. At the time of execution of Ex.B4, the assistants of K. Ramachandra Rao and some others were present. K. Ramachandra Rao attested Ex.B4 and another party by name Subramanyam also attested Ex.B4. Simhachalapathi Rao requested Subramanyam to attest Ex.B4. Both the attestors attested Ex.B4 in the presence of the testator and Simhachalapathi Rao signed Ex.B4 in their presence. This witness also deposed about his scribing General Power of Attorney executed by Simhachalapathi Rao in favour of his eldest son, which is Ex.B5, wherein the eldest son of Simhachalapathi Rao was authorized to manage his properties. Simhachalapathi Rao signed Ex.B5 after admitting the contents thereof. This witness was cross-examined and several suggestions put to this witness had been specifically denied. It is pertinent to note that the second witness DW.2 is not only the scribe of Ex.B4, but he was the scribe of Ex.B5 as well. The very execution of Ex.B5 on the selfsame day i.e., 25.4.1983, would in a way probablise the genuineness or otherwise relating to the execution of Ex.B4 as well on the same day i.e., 25.4.1983.

28. DW.3 deposed that he worked as Assistant of DW.2 for about three years and while working as Assistant under DW.2, he had attested Ex.B4 at the house of

DW.2 and the evidence of this attesting witness, in all material particulars, would show that the evidence of DW.2 is trustworthy. It is no doubt true that DW.2 is the scribe and DW.3 is the attesting witness. DW.3 clearly deposed that this witness and Subramanyam attested Ex.B4 in the presence of Simhachalapathi Rao and at the time of execution of Ex.B4, Simhachalapathi Rao was in a sound disposing state of mind and the same was registered on the same day between 4 to 5 p.m. and he signed as identifying witness before Simhachalapathi Rao. It is pertinent to note that this witness also deposed relating to the execution of General Power of Attorney-Ex.B5 in favour of his eldest son and this document also was attested by this witness and the other attestor Subramanyam and clearly this witness deposed relating to the state of mind of then deceased Simhachalapathi Rao and also the due execution of both Exs.B4 and B5. In the light of these circumstances, the trial Court recorded findings, no doubt not in detail, to arrive at a conclusion that Ex.B4 is true, valid and binding.

29. Certain surrounding suspicious circumstances had been pointed out to the effect that the other natural heirs also had been excluded. It may be. But it is pertinent to note that on the selfsame day for the management of the properties, Ex.B5 was executed. Even otherwise, this aspect need not detain this Court any longer since it is the will and wish of the testator and if the testator had chosen to dispose of his properties in a particular fashion by way of a testament and if the due execution of the same had been proved in accordance with law, the other aspects may fall into insignificance. No doubt reliance was placed in Pentakota Satyanarayana's case (supra), wherein it was held by the Apex Court that the mere fact that the natural heirs were excluded and the legally wedded wife was given a lesser share would not be a suspicious circumstance. Even otherwise, in the light of the findings recorded in relation to PW.1 and the marital tie in between PW.1 and the deceased Simhachalapathi Rao, this question need not be dealt with any further in elaboration and in view of the same, the findings recorded by the trial Court are hereby confirmed.

Point No. 3:

30. In the result, the appeal being devoid of merit the same shall stand dismissed. However, in the peculiar facts and circumstances, the parties to the litigation to bear their own costs.