
(2005) 11 AP CK 0101
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 103 of 1996

Ravikoti Mattam Shashi Mohan	Vs	APPELLANT
Smt. Parvathamma and Others		RESPONDENT

Date of Decision : 23-11-2005

Acts Referred:

Hyderabad Municipal Corporation Act, 1955 — Section 268, 34(2)

Citation : AIR 2006 AP 150 : (2006) 3 ALD 73

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

Bench : Single Bench

Advocate : P.V. Narayana Rao, for the Appellant; A. Ravi Shankar, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.

INTRODUCTORY FACTS :

1. Ravikoti Mattam Shashimohan, son of Chintamani, the unsuccessful plaintiff in O.S., No. 1041 of 1985 on the file of IV Additional Judge, City Civil Court, Hyderabad aggrieved by the judgment and decree made in the aforesaid suit dated 12-2-1996 had preferred this appeal. Smt. Vimalamma, the sister of Ravikoti Mattam Shashimohan, i.e., the daughter of Chintamani was impleaded as Rule 4 in this appeal, who died on 25-8-1998, R-5 to R-8, the legal representatives of R-4 were brought on record. For the purpose of convenience, the parties hereinafter would be referred to as plaintiff and defendants 1 to 3 and the legal representatives of Smt. Vimalamma. The suit was filed by the plaintiff claiming the relief of partition of the plaint schedule house and also for injunction restraining defendants 1 to 3 from carrying out alterations or alienating the properties. The relief is prayed for on the strength of a registered gift deed. Defendants 1 and 2 filed a written statement in detail and defendant No. 3 also filed yet another written statement. Though the gift deed dated 15-4-1930, is

not in serious controversy, the specific stand taken by the defendants 1 to 3 is that the said gift deed was never acted upon, and their branch perfected title by adverse possession and incidentally it was stated that in the facts and circumstances of the case, the implied ouster also can be inferred. On the strength of the respective pleadings of the parties, having settled the issues, the learned Judge recorded the evidence of P.W. 1, the plaintiff, yet another Raghavender Rao as P.W. 2, the third defendant was examined as D.W. 1 and the second defendant was examined as D.W. 2, the evidence of the persons said to have been tenants had been recorded as D.Ws. 3 to 5. The plaintiff relied on Ex. A1, the registered gift deed dated 15-4-1930, the defendants placed reliance on Ex. B1 to B.25. The learned Judge on appreciation of evidence came to the conclusion that the branch of defendants 1 to 3 has been in possession of the property for long time without any interruption whatsoever and thus had perfected title by way of adverse possession and ultimately negated the relief. Hence, the appeal,

CONTENTIONS OF SRI P.V. NARAYANA

2. Shri P.V. Narayana Rao, the learned Counsel representing appellant-plaintiff would submit that in view of the fact that Chintamani died intestate, the branch of Chintamani would be represented by the plaintiff and his sister Vimalamma and since the sister is no more, the legal representatives of said Vimalamma were brought on record and hence, these parties would be entitled to the half share in the plaint schedule property as specified in Ex. A1. The learned Counsel also pointed out that though an issue in relation to adverse possession had been framed, no specific issue relating to ouster had been framed as such. The learned Counsel also would maintain that in a case of this nature where the parties are relatives, possession of one co-owner should be taken as possession on behalf of the other co-owners as well. On the mere fact that Chintamani kept quiet during his life time, by itself cannot be taken as extinguishment of the right of Chintamani branch to which otherwise they would be entitled to under Ex. A1. The learned Counsel also would further contend that even certain admissions made by D.Ws. would negative the stand of ouster and at any rate, inasmuch as the other side may have to discharge the burden, by mere production of some oral evidence of tenants or certain municipal records, the plea of ouster cannot be inferred and hence, in view of the fact that the document in question Ex. A1 is not in serious controversy, both the branches would be entitled to equal shares. The learned Counsel had taken this Court through the evidence available on record and also placed reliance on certain decisions.

CONTENTIONS OF SRI A. RAVI SHANKER:

3. Sri A. Ravi Shanker, the learned Counsel would contend that the conduct of the parties may have to be taken into consideration while deciding whether there was ouster. The learned Counsel also would contend that the fact that continuously, even from the date of Ex.A 1, Chintamani branch never exercised the rights and the other branch, Nagabhushnam branch alone has been in

continuous possession and enjoyment of the property, would amply establish implied ouster. The learned Counsel also placed reliance on certain decisions to substantiate his stand. The learned Counsel while further elaborating his submissions had pointed out to certain mistakes committed in the recording of evidence and would contend that the evidence may have to be appreciated in toto and if the latter portion of the evidence also is taken into consideration it is clear that the recording of evidence to the effect that Chintamani resided in the property can be definitely taken to be a mistake. Even otherwise, the learned Counsel would contend that except the evidence of P.W. 1 there is no other evidence available on record and the evidence of P.W. 2 is of hear say nature relating to the family affairs inclusive of adoption. The counsel also would contend that on the contrary defendants 1 to 3 had placed both oral and documentary evidence, D.Ws. 3 to 5 and also Ex. B. 1 to B. 25, which would clearly go to show that at no point of time, subsequent to the execution of Ex. A1, any rights had been exercised by Chintamani branch over the suit schedule property.

4. Heard the counsel on record, perused the oral and documentary evidence and also findings recorded by the learned Judge.

5. Before further proceeding with the appreciation of the oral and documentary evidence available on record, it would be appropriate to have a glance at the respective pleadings of the parties, the issues settled and the findings recorded by the learned Judge in this regard, which are being assailed in this appeal, the plaintiff pleaded in the plaint as hereunder :

The plaintiff submits that a registered Gift Deed was executed by Sri Chinna Basavaiah son of late Chintamani of Hyderabad in favour of Sri Chintamani son of Butchaiah and Sri Nagabhushnaiah son of Daxina Murty bequeathing equally half of the house No. 1746 (old), 4.7.803 to 807 (new) situated at Kimati Basti residency, Isamia Bazar bounded on the east by a lane, on the west by passage, on the north by House No. 1756 (old) belonging to one Gunda Narsaiah and on the south partly by open space and partly by the house of Gunda Seetaiah, under a document No. 116/1930, registered at Sub-Registrar's Office, Hyderabad and according to which the said Gift Deed both the donees shall be the absolute owners of the said house with effect from dt. 15-4-1930 with a condition that the property shall not be alienated or partitioned during the life time of the donor and his wife and the rentals had to be paid to his wife and after her death the donors are entitled to partition the same or mortgage or alienate the said property that fell to each share.

Both the donor and donees died. The donees, Chintamani died on 22-6-1985 and Nagabhushanaiah died about 10 years back. Chintamani left behind him his son Shashi Mohan, daughter Smt. Vimallamma and wife Sivanagamma as the legal heirs and late Nagabhushnaiah left behind him his sons Siddilingam, Premnath, Machender and his wife Parvathamma, and Premanath went in adoption. Thus, Siddilingam, Machender and Smt. Parvathamma are the legal heirs of late Sri

Nagabhushanaiah.

The plaintiff submits that as possession of the said house was occupied by Siddilingam, Machender and Smt. Parvethamma, Ravikoti Mattam Shashimohan was in occupation of half the portion of the said house retained by his father late Chintamani. He shifted from the said house by constructing a house at Lalapet as the house has become old and dilapidated.

The plaintiff further submits that the defendants contrary to the conditions of the Gift Deed, failed to agree to the suggestion of partitioning the property equally between the heirs of late Chintamani and late Nagabhushanaiah. Contrary to this the defendants are trying to demolish the old building and are arranging to make alterations without the consent of the plaintiff. Therefore, the defendants are to be restrained by way of perpetual injunction, carrying out any alterations of alienations or of any type of transfer in whatsoever manner till the shares of the plaintiff and the defendants are ascertained.

6. The first and second defendants filed written statement with the following averments :

In respect of para 3 of the plaint it is submitted that it is true that late Sri Mahantu Mattam Chinna Basavaiah executed a registered gift deed dated 15-4-1930 and duly registered it and the contents of the gift deed are correct and the father of the plaintiff and the husband and father of defendants 1, 2 and 3 respectively have become the owner of the suit house from 15-4-1930 and in the end of year 1931 or beginning of 1932 the donor Mahanthu Mattam Chinna Basavaiah died and after his death, the father of the plaintiff, Chintamani by name left the suit house and stayed with his natural parents at house No. 4.7.916 & 917, Isamia Bazar, Hyderabad and got married there and lived there with their family as its member. After the demise of his natural parents late Sri Chintamani father of plaintiff got a share in H. No. 4.7.917, Esamia Bazar, Hyderabad by effecting partition between him and his natural brother Revikoti Mattam Veerabhadraiah and late Chintamani and his natural brother Veerabhadraiah were living in their portions as absolute owners and late Chintamani constructed a house at Malakpet and shifted to it in 1972 or 1973 and gave his portion of the house No. 4.7.917, Esmia Bazar to his daughter Smt. Vimalamma who still continues to reside even today.

In respect of para 4 of the plaint it is submitted that plaintiffs father and Nagabhushanam died and other relationships shown are true.

In respect of para 5 of plaint it is submitted that the entire suit house was in possession and occupation and enjoyment of late Nagabhushanam from the death of the donor Chinna Basvaiah in the end of year 1931 or 1932 and late Chintamani was never in possession from 1931 onwards nor his son plaintiff was in possession from any time muchless the half portion, hence, it is denied that neither Chintamani nor the plaintiff was in possession of the half portion of the suit house at any time from the death of late Mananthu Mattam Chinna

Basavaiah in the end of year 1931 or beginning of 1932.

Para six of the plaint is denied late Chintamani during the life time of late Mahantu Mattam Nagabhushanam nor after his death ever demanded or suggested partitions of the suit property and even the plaintiff after the death of his father ever demanded any portion nor suggested any partition.

Para 7 of the plaint is denied. The plaintiff is not entitled to any share in the suit house much less half portion by way of partition as the plaintiff has no right of partition or claim any share in the suit house. As the suit house absolutely belongs to defendants and no one has any share in it without prejudice to other plea, the defendants have become full and absolute owners of the suit house even by way of adverse possession and late Mahantu Mattam Nagabhushanam was in possession uninterrupted and in full enjoyment from the end of 1931 or beginning of 1932 since the death late Chenna Basavaiah and even till today by the heirs, these defendants.

Para 8 of the plaint is denied the plaintiff has no cause of action against the defendants as they are the absolute owners of the suit house and the plaintiff has no right to claim or interest to any portion of the suit house much less to half portion. The allegation that bricks were brought on 29-7-1985 is a fiction created by the plaintiff to put some date for cause of action and to file this adventurous suit.

These defendants deny all the adverse allegations of the plaint which are not herein specifically denied.

These defendants further submit that after the death of late Chennabasavaiah, the husband and father of defendant 1 and Defendants 2 and 3 respectively came into possession of the entire suit house as plaintiff late father Chintamani left the house and resided with his natural parents by H. No. 4.7.916 and 913 Isamia Bazar, Hyderabad. Married there and eked his livelihood there by joining bank service in State Bank of Hyderabad at Sultan Bazar and assumed the family name of his natural father Ravikoti Mattam and not the surname of late Chinna Basavaiah, i.e. Mahantu Mattam which these defendants have. Since plaintiff father left the suit house the late Nagabhushanam was in possession of entire suit house enjoying the benefits i.e. rents by letting out four portions to the tenants and occupying remaining portion with his family i.e. the defendants late Nagabhushanam paid property tax and other rates to municipal Corporation of Hyderabad since 1953 onwards after the death Chenna Basavaiah's widow Rachamma and even water and electricity charges were paid by late Nagabhushanam who maintained the suit house and enjoyed it as full and absolute owner. Chintamani who knew that late Nagabhushanam was in full occupation of the suit house never questioned nor exercised any right over half portion or any portion of the suit house nor demanded any partition or share and treated late Nagabhushanam as absolute owner and as such even other wish late Nagabhushanam became full and absolute owner by way of adverse possession

since 1931 as he was in its possession uninterrupted for more than 45 years and after his death in 1976 as his heirs the defendants are continuing in possession of the suit house as full and absolute owners uninterrupted and exercise all rights of ownership and collecting rents paying taxes water and Electricity consumption charges effecting repairs and letting the portions in it to tenants.

It is further submitted that the defendant No. 3 who is a close relative of the plaintiff in collusion with plaintiff got the suit filed in order to harass these defendants and illegally gain the advantage and entire house for him. It is further submitted that the suit property is not a joint family property but only a property gifted to different members of the two families. As such the Late Nagabhushanam became full and absolute owner from 1932 onwards by way of adverse possession and defendants who are the legal representatives and heirs of late Nagabhushanam are full and absolute owners of the suit house and the plaintiff has no right to claim partition and half share of the suit property.

7. The third defendant filed written statement substantially denying the allegations. It was pleaded by the third defendant as hereunder :

Allegations in the plaint under reply are false, baseless, mischievous and misconceived. Allegations in paras 1 and 2 of the plaint under reply pertain to the description of the parties, no specific reply is needed, however, the plaintiff is put to strict proof thereof.

Allegations in para 3 of the plaint under reply are false, and baseless and not admitted in substance. This defendant is in possession and enjoyment of the property to the extent of half portion as absolute owner and possessor and plaintiff has no manner of title in the suit property, assuming if the plaintiff has any right by virtue of the gift deed which has been executed in favour of his father in the year 1930 the same was abandoned and not acted upon and neither the plaintiff nor his father was ever in possession of the suit property. The plaintiff's father abandoned his right in the suit property in the year 1930 and stayed with his father and brother and got the properties portioned from his real brother Sri Veerabhadraiah and declared himself that he is not having any interest in the suit property by his own acts and deeds and the said Chintamani the father of the plaintiff in whose favour the suit property was gifted never stayed in the suit property and not paid any tax either to Municipality or to any other authority. As such, the plaintiff has no manner of right or interest in the suit property, That it is submitted that the suit property was very old, and this defendant invested huge amounts for repairs, for electricity fitting and water connection. The plaintiff nor his father has shown any interest in the suit property for a period of more than 55 years, and at this stage, the plaintiff filed this false suit for partition of the suit property because of the hike in prices, even though he has not made any attempt to keep the property intact nor paid any money towards the taxes. Chintamani, father of the plaintiff during his life time for a period of 55 years, never demanded for the possession or the partition of

the suit property, on the contrary stayed with his real parents and got partitioned the properties and took half share from his real brother Sri Veerabhadraiah and was enjoying the same and the present plaintiff succeeded. The plaintiff to grab the property by fair or foul means filed a false suit against this defendant which is untenable under law. The plaintiff is not entitled for any share in the suit property.

Allegations in para 4 of the plaint under reply are not disputed to the extent; of relationship of the parties and their particulars but the suit property was and is in possession and enjoyment of Nagabhushanaiah and his successors in interest and the plaintiff has nothing to do with the suit property.

Allegations in para 5 of the plaint under reply are false, baseless and twisted for the purpose. The defendants alone are in possession of the property neither the plaintiff nor his father i.e. late Chintamani was ever in possession of the suit property to the extent of half share as alleged. Chintamani stayed with his brother Veerabhadraiah and got partitioned the properties along with his real brother and never stayed in the suit property. It is a fact, that the suit property has become old and dilapidated and this defendant invested huge amounts to get it repaired and staying in the suit property was absolute owner and possessor. Assuming without admitting the plaintiff got any right it has lost the same, as he was never in possession of the suit property for more than 55 years, and the defendants became the owners by virtue of adverse possession to the knowledge of one and all.

Allegations in paras 6 and 7 of the plaint under reply are false and baseless. The plaintiff never made any suggestion of partition of the property as alleged. As mentioned supra, the father of the plaintiff abandoned his right even if any he got under the said gift deed by his own acts and deeds and this Defendant is enjoying the property of his own and spent huge amounts for keeping the suit property intact from ruins. The plaintiff is not entitled for any share as such the question of asking for injunction does not arise. The plaintiff is not entitled for the relief of perpetual injunction. This defendant is having every right to alter or construct and deal with the property for his own benefit. The plaintiff is not entitled for any share in the suit property.

With regard to allegations in para 8 of the plaint under reply it is submitted that the plaintiff is not. having any cause of action to file the present suit the carrying of alteration work dated 29-7-1985 does not give any right and much less any cause of action to file the present suit and if there any cause of action arose, it arose only on 5-4-1930 when the alleged gift deed was executed and as such the suit is barred by limitation.

Allegations in para 9 of the plaint under reply pertain to jurisdiction and no specific reply is needed. However, the suit is hopelessly barred by limitation. The court fee paid u/s 34(2) for partition a sum of Rs. 200/- is not correct. The suit is not for partition but it is for possession of the half of the property under the gift

deed as such the ad valorem court fees ought to have paid on the present market value.

Prayers are misconceived and the plaintiff is not entitled for half of portion as alleged and also the possession of the same, and plaintiff is not entitled for any relief as claimed as such the suit be dismissed in limine, without further enquiry.

8. On the strength of the pleadings referred to supra, the following issues were settled by the trial Court:

1. Whether the plaintiff is entitled for partition of the suit schedule property and for possession of half share as prayed for ?

2. Whether the plaintiff is entitled for perpetual injunction as prayed for ?

3. Whether the suit is not properly valued and the court fee paid is not sufficient ?

4. Whether the suit is barred by time ?

5. Whether the defendants became the owner of the suit property by virtue of adverse possession ?

6. Whether the D-3 is entitled for compensatory costs of Rs. 3,000/- ?

7. To what relief?

9. The learned Judge recorded the oral evidence of the under noted witnesses.

For Plaintiff:

P.W. 1 R.M. Shashi Mohan.

P.W. 2 P. Raghavender Rao.

For Defendants :

D.W. 1 M. Siddilingam (defendant No. 3)

D.W. 2 M. Machendernath (defendant No. 2)

D.W. 3 V. Subadramma.

D.W. 4 S.S. Varappa.

D.W. 5 Hanumanthrao.

10. The under noted documentary evidence had been relied upon by the parties.

For Petitioner :

Ex. A-1: Registered Gift Deed, dated 15-4-1930

For Defendants :

Ex. B-1 : property tax receipt dated 30-4-1952.

Ex. B 2: -do- dated 10-10-52 Ex. B 3: -do- dated 11-6-1953 Ex. B 4: -do- dated 16-12-65 Ex. B 5 : -do- dated 4-3-66 Ex. B 6 : -do- dated 19-4-67 Ex. B 7 : -do- dated 6-2-68 Ex. B 8 : -do- dated 31-3-(sic) Ex. B 9 : Electoral Card dated 1-1-1975, Ex. B 10: - do- dated 25-6-77 Ex. B 11: Notice from Corporation of Hyderabad dated 24-11-64 Ex. B 12 : Notice of prosecution by Corporation. dated 16-1-1965 Ex. B 13 : Counter in C.C. No. 8/33/65 Ex. B-14 : Notice u/S. 268 of the M.C.H. dated 12-6-73 Ex. B-15 : Assessment Notice. Ex. B-16 : Objection petition dated 16-12-70 Exs. B-17 & 18 : Notice from Corporation dated 1-7-71, 7-7-71. Ex. B-19 : Distress Warrant of Corporation. Ex. B-20 : C.C. of judgment in M.A. No. 136/83, dated 13-6-1983. Ex. B-21 : to Ex. B-25 : Counter foil of Receipts to Ex. A-1 to A-100.

10-A. The learned Judge on appreciation of evidence recorded findings on issues 1, 2, 4 and 5 and decided issues 1, 2 and 4 against the plaintiff and issue No. 5 in favour of the defendants holding that the plaintiff utterly failed to establish his right to partition under EX. A1 and his enjoyment to half share in the plaint schedule property. Issue No. 3 was also decided against the plaintiff and issue No. 6 was answered against D-3 and ultimately while answering issue No. 7, the suit was dismissed with costs.

11. In the light of the above, the following points arise for consideration in this appeal:

1. Whether the appellant-plaintiff and the legal representatives of Smt. Vimalamma, as heirs of Chintamani, are entitled to half share in the plaint schedule property as per Ex. A1?
2. Whether defendants 1 to 3 are entitled to succeed on the plea of adverse possession, in the facts and circumstances of the case ?
3. if so, to what relief the parties would be entitled to ?

POINT NOS. 1 AND 2 :

12. The document, on the strength of which the suit is instituted, is the registered gift deed Ex. A1 and the contents of the said document are self-explanatory and the said document reads as hereunder :

DEED OF GIFT

Deed of gift made and executed by Mahanthmatam Chenna Basavaiah, son of the late Chintamani, aged 50 years, Veera Saiva Lingayath Brahmin of Chandaipet at present permanently residing at Residency Esamia Bazaars, Hyderabad-Dn., hereinafter called the "Donar" in favour of (1) Chintamani, aged 17 years per his natural mother and guardian Annamma, residing at Residency Esamea Bazar, Hyderabad-Dn. and (2) Nagabhushanaiah minor aged 16 years, per his father and Guardian Dhakshinamoorry residing at Chandaipet, Hyderabad-Dn. hereinafter called the "Donees", witnesseth.

I am the absolute owner of house No. 1746, situated at Komti Basti, Residency

Esamea Bazaars, bounded as follows :

On the East by lane;

On the West by passage;

On the North by the house No. 1756, belonging to Gunda Narasaiah and

On the South partly by open space and partly by the house of the late Gunda Seetaiah.

And I am in exclusive and unencumbered possession of the said house and it was purchased by me out of my self-acquisitions, unaided by any family nucleus.

The Donee No. 1 who is related to me as my sister's son was adopted by me about 7 or 8 years ago with due ceremonies and has been ever since living with me as my adopted son.

The Donee No. 2 is my father's brother's grandson and he has been living with me for the last four or five years.

Out of natural love and affection towards both the Donees, I hereby voluntarily and without consideration, grant, transfer and convey absolutely by way of Gift unto and to the use of the said Donees my aforesaid House No. 1756, situated in Komti Basti, Residency Esamea Bazaars, Hyderabad-Dn, of the value of H.S. Rs. 4,000/-.

The said Donees shall be entitled to take the said house in equal moieties, that is to say, each of them shall take a half share each in the said house.

The said Donees shall be the absolute owners of the said house from today and I relinquish all my right, title and interest therein and it shall be lawful for them to enjoy and occupy the same with absolute rights of ownership but they will not be entitled to alienate or mortgage or partition the same during the life time of myself and my wife and they will be bound to pay the rents thereof to me during my life time and to my wife after me, if alive. After the death of both myself and my wife, they will be entitled to partition the same and will be entitled to mortgage or alienate, as they choose.

In witness hereof, I have hereunto set my hand at Residency Bazaars, Hyderabad-Dn, this the 15th day of April, 1930.

13. As can be seen from the respective stands taken by the parties there is no serious dispute or controversy relating to the execution of Ex. A1, but the stand taken by the defendants 1 to 3 is that Ex. A1 was never acted upon and the branch of Nagabhushanam alone has been in continuous uninterrupted possession of the plaint schedule property to the exclusion of the branch of Chintamani and hence, by virtue of perfection of title by adverse possession and ouster of the other co-owners they are bound to succeed. It is no doubt true that there is no specific plea of ouster, but there is a specific plea of adverse possession. It is needless to say that the plea of adverse possession may

incidentally include even the plea of express ouster or implied ouster as the case may be. P.W. 1, the plaintiff deposed that one Chinna Baswalah, son of Chintamani executed gift deed in favour of late Chintamani and Nagabhushanam, husband of first defendant and father of defendants 2 and 3, in respect of the plaint schedule property. This witness also deposed that both his father and the said Nagabhushanam accepted Ex. A1 the registered gift deed and the same was acted upon. P.W. 1 also deposed that there is a condition in the gift deed that both have no power to alienate or mortgage and they are entitled only to the suit property after donors death. P.W. 1 also deposed that donor and his wife died in the year 1935. P.W. 1 also deposed that after the death of donor his wife died ten years later. P.W. 1 further deposed that his father died in the year 1985 and he had demanded partition of plaint schedule property as per Ex. A1, but however, the defendants were not willing. He had issued a legal notice to the defendants demanding half share in the plaint schedule property by virtue of gift deed Ex. A. 1, and they had sent a reply with false pleas. In the cross-examination this witness admitted that his sister Vimalamma was alive then. It is needless to say that though the suit was originally instituted by the plaintiff only, the said Vimalamma was brought on record as R-4 in the appeal and in view of the fact that she is no more the legal representatives are on record. It is also pertinent to note that there is no conflict of interest in between these parties since all these parties, the legal representatives of Vimalamma and the plaintiffs, if at all are entitled to the share they represent the branch of Chintamani. This witness was cross-examined at length relating to certain of the family affairs. This witness deposed that it is not true to suggest that he never resided in the suit house at any time and his father Chintamani died in 1985 at Malakpet at his residence. His father was residing during his life time with him at Malakpet and during his life time his father was paying electricity tax, municipal tax and other taxes to the authority and the said amounts were being paid by his father through Nagabhushanam. He had not filed any tax receipts in the suit. P.W. 1 also deposed in the cross-examination that the suit house is an old one and he does not know when it was constructed. This witness also deposed that he knows that the suit house was in dilapidated condition and recently entire suit house had collapsed. This witness was again recalled and he was further cross-examined. This witness admitted that late Chintamani and Nagabhushanam are not real brothers. P.W. 1 also deposed that it is not true to suggest that his father had another house in his name at Esamia Bazar. The house in Esamia Bazar is standing in the name of his mother but not in his father's name and he does not know whether his father was residing at the time of execution of Ex. A1. But, however, this witness specifically deposed that it is not true to suggest that either P.W. 1 or his father resided in the suit schedule property. This witness also was cross-examined relating to the school studies, the intermediate education and the other aspects. This witness also deposed that his official records contain the address of Malakpet and he was staying at Malakpet since 1980s and earlier to that he was staying in his mother's house. This witness also deposed that during the life time of his father the suit house was not mutated in the name of

his father from the name of Chinna Basavaiah. Even after the death of his father he had not taken steps to mutate the suit property in his name. P.W. 1 also deposed that during his lifetime he demanded for partition orally and there were panchayats also held between the parties about the partition and nothing to that effect is in writing. The panchayat was not held by the elders of the community. This witness was also cross-examined about certain other details and several of the suggestions put to him that his branch has nothing to do with the plaint schedule property, had been denied.

14. P.W. 2 is a formal witness, a retired post master, who had deposed about certain of the details which had been informed to him and no doubt this witness deposed that, to his knowledge both these branches Chintamani and Nagabhushanam are entitled to 50% shares each. This witness also was cross-examined at length. This is the evidence, which is available on record, adduced on behalf of the plaintiff. Apart from this oral evidence of P.Ws. 1 and 2, the documentary evidence is Ex. A1 the registered gift deed, the contents of which already had been referred to supra.

15. D.W. 1, the third defendant in the suit, deposed about the relationship. This witness also deposed that Chinna Basavaiah is his grandfather. Chinna Basavaiah adopted Nagabhushnam and Chintamani, He had not seen Chinna Basavaiah, and his father expired about 25 years ago and Chintamani expired about 11 years ago. This witness also deposed that he has been living in the suit property and his brother also has been living and they have been residing in separate portions in the said house. This Witness also deposed that he was born in the suit house and to his knowledge his father had been living in the self same house and his father died in the suit property and the rituals also were performed in the selfsame property. D.W. 1 also deposed that Chintamani has got a brother Veera Bhadraiah and a sister Vimalamma, but the witness again says that the Vimalamma is not sister, but is the daughter of Chintamani. This witness also deposed that Veera Bhadraiah is still alive. This witness further deposed that Chintamani and his brother Veera Bhadraiah partitioned their property and got equal shares. This witness also asserted that they have been in possession and enjoyment of the plaint schedule property in their own right as absolute owners and the plaintiff never claimed any rights in the suit property and Chintamani also never claimed any rights in the suit property and the plaintiff is not entitled to any share. This Witness in cross-examination deposed that he is not aware that whether Chinna Basavaiah executed any gift deed in respect of this property and he had not seen it and he had seen Chintamani, but he had never seen Chintamaniah living in the suit property along with his father. This witness also deposed that it is not true to say that the late Chintamaniah lived in the suit property till 1985, i.e. till his death. This witness further deposed that the suit property is an old one and half of the portion had collapsed only a year back. This Witness also denied the suggestion that Chinna Basavaiah executed a gift deed in respect of the suit property gifting equally to his father and Chintamani. This witness also deposed about the telephone number and also deposed that the

telephone number is in the name of Ravi, the said Ravi is not the plaintiff, but however, the witness again deposed that the telephone belongs to the plaintiff. This witness further deposed that it is true that the gas connection is in the name of Chitamani and they had taken the connection, but however, he. denied the suggestion that plaintiff also is entitled to the share in the plaint schedule property. This witness further deposed that the telephone was shifted to his house about 5 months back and the said telephone was in the name of Ravi, previously the phone was in the house of Ravi, the son-in-law of Shashi Mohan, Esamia Bazar and the said house is one furlong from the suit house. The other suggestions also were denied by this witness. The second defendant was examined as D.W. 2. This witness deposed about the gift deed Ex. A1 and also deposed that as per the gift deed the house was gifted to his father and the father of the plaintiff. This witness also deposed that Chintamani resided at house No. 4,7.917, Esamia Bazar at the time of gift deed Ex. A1 and the distance between the gifted house and the house where Chintamani was saying is one furlong. This witness also deposed that from the date of gift his father and his family alone have been in possession of the entire plaint schedule property. To his knowledge from 1956 Chintamani is staying in other house. Even earlier also Chintamani was not staying in the suit property. It was no doubt recorded in the evidence of D.W. 2 as hereunder :

Chintamani died in the year 1985 July, Chintamani was residing in my house even after the death of my father in 1976, he never visited the suit property.

Submissions were made by both the counsel, the learned Counsel for the appellant contended that this would amount to admission and on the contrary, the learned Counsel for respondents-defendants 1 to 3 contending that the whole evidence to be read to appreciate the evidence and it is only a bona fide mistake. Be that as it may, it is suffice to state here that the specific stand taken by the contesting defendants D1 to D3 is one of plea of adverse possession. D.W. 1 also deposed about the telephone and had deposed about Ex. B1 to B.8, the tax receipts Ex. B9 and B.10, the electrical card Ex. B. 11, the notice from the Corporation Ex. B.12, notice of prosecution by the Corporation Ex. B13, counter in C.C. 2/33 of 1965. Ex. P. 14, notice u/s 268 of the Municipal Corporation of Hyderabad Act, Ex. B15 the assessment notice, Ex. B. 16 the objection petition, Ex. B. 17 and B. 18 notice from Corporation, Ex. B.19 the distress warrant of the Corporation, Ex. B.20 the certified copy of the judgment in M.A. No. 136 of 1983, Ex. B.21 to B.25 the counterfoil receipts. This witness in the cross-examination deposed that he is residing at Vanasthalipuram since ten years and his mother also is staying with him and this witness also deposed that it is true that half of the portion of the suit property was collapsed. This witness also deposed that as per gift deed his father and Chintamani got equal shares and as per the gift deed Nagabhushanam is the owner of half portion. But, however he denied the suggestion that these branches are entitled to the equal shares. This witness also deposed that he does not know who has written the name of Nagabhushanam on Ex. B.1. This witness also deposed that he does not know how the name of

Nagabhushanam was mentioned in the tax receipts Ex. B4 to B.8. this witness also deposed that third defendant got the gas connection standing in the name of plaintiffs father and also the telephone connection about six months back and he had denied the other suggestions. This is the evidence of D.Ws. 1 and 2 the sons of Nagabhushnam. D.Ws. 3 to 5 were examined, who deposed about the tenancy and the branch of Nagabhushanam exercising the rights.

16. On over all appreciation of the evidence available on record especially in the light of the evidence of D.W. 2 it is clear that at no point of time between Chintamani branch and Nagabhushanam branch there was assertion of exclusive title of one party and denial of title by another party. It is needless to say that this would be a very crucial aspect especially in the light of the fact that neither Chintamani nor Nagabhushanam were alive by the time of this litigation, to be examined to state the real set of things. There are certain stray admissions in the evidence of D.Ws. 1 and 2 relating to the telephone connection and the gas connection. The evidence of D.W. 1 is clear and categorical and D.W. 1 in fact deposed that during the life time of Nagabhushanam his father was making payments to Nagabhushanam and in turn Nagabhushanam was making the payment of taxes etc. As already referred to supra neither of those was alive and hence, such evidence could not be brought on record for better appreciation of the facts of the case.

17. The learned Counsel representing respondents-defendants 1 to 3 made certain submissions on the ground that in the facts and circumstances, the ouster can be implied. Strong reliance was placed on Mohammad Baqar and Others Vs. Naim-un-Nisa Bibi and Others, . The learned Counsel for the appellant placed reliance on Kuldip Mahaton and Others Vs. Bhullan Mahato (Dead) by Lrs. and Others, , Meethiyan Sidhiqu Vs. Muhammed Kunju Pareeth Kutty and others, , Md. Mohammad Ali (Dead) by Lrs. Vs. Sri Jagadish Kalita and Others, and Raghunath Pershad (died) by LRs. Vs. Janaki Bai and Others, .

18. It is true that there is some evidence on record to show that the branch of Nagabhushanam alone has been enjoying the plaint schedule property. When the branches of Chintamani and Nagabhushanam are the co-owners by virtue of the registered gift deed Ex. A1, both the branches are entitled to the equal shares unless the other branch is able to establish the perfection of title by adverse possession by clear ouster. It is true that specific plea of ouster had not been taken but the plea of adverse possession had been taken. Even in the evidence of D.W. 2 enjoyment of the property from 1956 alone had been deposed. The mere fact that one of the branches representing the co-owners had been living at a different place, even assuming for a moment such stand taken by the defendants 1 to 3 to be believed, by itself may not amount to ouster of a co-owner. The settled legal position is that normally one co-owner would be holding the property on behalf of the other co-owners also and the burden is on such a party who asserts that such party has been exclusively enjoying the property to the total exclusion of the other co-owner by ousting the other co-owner. The

question which falls for consideration in the present case is whether the said burden cast upon the defendants 1 to 3 by law had been discharged, or whether the branch of Chintamani can be non-suited on such a ground. It is no doubt true that the tax receipts had been marked and for the reasons that the branch of Nagabhushnam has been looking after the affairs of the plaint schedule property such notice could have been served on such branch and by that itself ouster cannot be inferred. As already referred to supra, P.W. 1 deposed that Chintamani even during his lifetime made a demand for partition on several occasions and there were several me-dilations also, but however none concerned with such mediation had been examined. Be that as it may, in the light of the recitals in Ex. A1 inasmuch as by mere production of the documentary evidence like tax receipts and notice served by Municipal Corporation of Hyderabad and the mere oral assertion made by D.W. 1 to D.W. 5 relating to exclusive enjoyment of one of the branches of the co-owners, ouster cannot be inferred especially in the absence of specific assertion or denial relating to the same by either of the branches at any point of time during the life time of both Chintamani and Nagabhushnam. This is the crucial aspect, which may have to be taken into consideration while appreciating the evidence available on record. The evidence of D.Ws. 1 and 2 also in a way would suggest the enjoyment of property by both the branches. The stray admissions made by both D.Ws. 1 and 2 were not explained under what circumstances, the telephone connection and gas connection came to be in the said property coupled with the said admissions read along with the evidence of P.W. 1, it may have to be inferred that there was some understanding during the time of Chintamani and subsequent to his death a demand for partition was made since the same was denied the suit was thought of. Except this conclusion no other conclusion is possible in the facts and circumstances of the case. As already observed supra mere production of tax receipts or the notice served by the Municipal Corporation of Hyderabad by themselves, would not be sufficient to establish the concept of ouster so as to exclude a co-owner from inheriting the property if otherwise the co-owner is entitled to succeed to the property. In the light of the clear recitals of Ex. A1 coupled with the admissions made by D.Ws. 1 and 2 read along with the evidence of P.W. 1, this Court is of the considered opinion that the contesting defendants 1 to 3 were unable to substantiate their stand on either plea of adverse possession or the ouster, as the case may be, and it is needless to say that the branch of Chintamani may have to succeed to the half share of the plaint schedule property. It is needless to say that apart from the appellant-plaintiff, the legal representatives of Vimalamma, who were brought on record, also would be entitled to their respective shares in the half share of Chintamani's branch. With the above clarification, inasmuch as the findings recorded by the learned Judge cannot be sustained, the said findings are hereby set aside and accordingly the appellant is bound to succeed.

Point No. 3 :

19. In the light of the findings recorded above, the appellant-plaintiff along with the legal representatives of Vimalamma R4 in the appeal would be entitled to the

half share in the plaint schedule property to which deceased Chintamani would be entitled to by virtue of Ex. A1. Accordingly, the preliminary decreet for partition of half share in the plaint schedule property dividing it into two half, one to Nagabhushnam branch and another to Chintamani branch are hereby granted and the parties to the litigation to work out the further shares, if they are advised to do so, in the light of the findings recorded supra.

20. Accordingly, the appeal is hereby allowed. In view of the close relationship between the parties, the parties to the litigation to bear their own costs.