(2025) 10 TEL CK 0066

Telangana HC

Case No: AS No.160 Of 2017

Godari Ramulu and Others	APPELLANT
Vs	
Godari Bheeraiah	RESPONDENT

Date of Decision: Oct. 16, 2025

Acts Referred:

- Civil Procedure Code, 1908 — Section 96
- Hindu Succession Act, 1956 — Section 8
- Evidence Act, 1872 — Section 5, 50, 60

Hon'ble Judges: B.R.Madhusudhan Rao, J

Bench: Single Bench

Advocate: Vedula Srinivas, K.Raghuveer Reddy

Final Decision: Allowed

Judgement

B.R.Madhusudhan Rao, J

1. The present Appeal is filed under Section 96 of C.P.C. assailing the Judgment and Decree passed by III Additional District and Sessions Judge, Asifabad, in OS.No.9 of 2016 dated 06.01.2017.

2. Appellant Nos.1 to 3 are the defendants and the respondent is the plaintiff. During pendency of the Appeal, appellant No.1 died and his LRs are brought on record as appellant Nos.4 to 7.

3.1. Learned Senior Counsel for the appellants submits that the learned trial Court failed to see that the suit is filed after 13 years of the death of Godari Beeraiah and no reasons are given by the respondent-plaintiff for such inordinate delay and also failed to see the conduct of the respondent-plaintiff, which is lacking

bonafides, and he did not approach the Court with clean hands. Respondent-plaintiff did not demand for partition of the properties either when Godari Beeraiah was alive, and there is no evidence to show that Late Beeraiah married Banamma and that the respondent- plaintiff was born out of their wedlock.

3.2. The learned trial Court has misread the evidence of PW.2, who stated that Banamma was brought by Beeraiah only to look after his children and he did not marry her and even as per PW.2, Banamma had 1st husband by name Lasmaiah and thereafter she married Madhunaiah and children are born to her. Respondent-plaintiff does not know when his mother married Beeraiah. The evidence adduced by the respondent-plaintiff is against him and some stray sentences are picked up to support the case. The learned trial Court failed to see that there is no birth certificate nor any school record to show the father's name of the respondent-plaintiff. Exs.A7 to A17 are the documents issued by various authorities based on the declaration by the plaintiff and there is no document which could establish his claim and placed reliance on the judgment in Dolgobinda Paricha Vs Nimai Charan Misra and Others AIR 1959 SC 914 and prayed to set aside the impugned judgment.

4. Learned counsel for the respondent-plaintiff submits that the learned trial Court has properly appreciated the facts of the case coupled with the evidence led by the parties by taking into consideration Exs.A1 to A23 and rightly decreed the suit by passing a preliminary decree. No interference is called for, in support of his contention he placed reliance on the decisions in the cases of

(1) Smt.Aina Devi Vs. Bachan Singh and another AIR 1980 Allahabad 174 , (2) Chitru Devi Vs. Smt. Ram Dei and others AIR 2002 Himachal Pradesh 59.

5. Heard learned counsel on record, perused the material.

6. Now the point for consideration is: Whether the impugned judgment passed by the learned III Additional and Sessions Judge, Asifabad in OS.No.9 of 2016, dated 06.01.2017 suffers from any perversity or illegality, if so, does it requires interference of this Court?

7. Respondent-plaintiff has filed suit for partition and separate possession of vacant land against the appellant Nos.1 to 3-defendant Nos.1 to 3 in respect of seven schedule properties in different survey numbers with specific boundaries. It is stated in the plaint that father of the respondent-plaintiff by name Godari Beeraiah was the owner and possessor of lands in Sy.No.463/A admeasuring to an extent of Ac.00-08 guntas; Sy.No.475/A admeasuring to an extent of 9075 Sq. yards; Sy.No. 654/A admeasuring to an extent of Ac.00-06 guntas; Sy.No.658/A admeasuring to an extent of Ac.00-03 ½ guntas; Sy.No.660/A admeasuring to an extent of Ac.00-05 ¾ guntas; Sy.No.663/AA admeasuring to an extent of Ac.00-36 guntas, and in Sy.No.683 admeasuring to an extent of Ac.02-20 guntas, which is the plaint schedule property. Godari Bheeraiah succeeded the above said property from his father namely Godari Mallaiah in

the partition that took place among the sons of late Godari Mallaiah. Godari Bheeraiah has married Godari Poshamma and out of wedlock, they are blessed with 3 children, who are appellants-defendant Nos.1 to 3. After the death of Poshamma, Godari Bheeraiah has married Banamma and that the respondent-plaintiff is born to them. After the death of Godari Bheeraiah, Banamma left the society of the respondent-plaintiff and married one Chegyama Madhunaiah, resident of Andugulapet Village of Mandamarri Mandal. Since then she is living there at, and that Banamma has no right over the suit schedule properties. Godari Bheeraiah died about 12 years back, leaving the respondent-plaintiff and appellant Nos.1 to 3-defendant Nos.1 to 3 as his legal heirs under Section 8 of Hindu Succession Act.

8. Appellant Nos.1 to 3-defendant Nos.1 to 3 filed their written statement and contended that Godari Beeraiah died on 15.07.1998 and the suit is barred by limitation as it is filed beyond 12 years. And the respondent-plaintiff is aware that there is no joint ownership over the suit lands and the respondent-plaintiff never enjoyed the possession or ownership with that of the appellant Nos.1 to 3-defendant Nos.1 to 3. Respondent-plaintiff did not mention the date, month and year of the alleged marriage of Godari Bheeraiah with Banamma. Banamma is the wife of Chegyama Madhunaiah and she still continues to be his wife. In fact, Banamma has married one Duta Lasumaiah @ Lachulu, Son of Posham, resident of Mudigunta and thereafter, she left him and married Madhunaiah about 50 years back, and she is living in House No.2-13 at Andugula Pet, she never resided at Garimila at any point of time. Respondent-plaintiff is not the legal heir of Godari Beeraiah, and has no right or share in the suit property and prayed to dismiss the same.

9. The learned trial Court has framed the following issues:

1. Whether the plaintiff is the son of Banamma and Godari Beeraiah or not?

2. Whether the plaintiff is the legal heir of Godari Beeraiah along with defendant Nos.1 to 3 or not?

3. Whether the suit schedule properties are not joint family properties of plaintiff and defendants?

4. Whether the suit properties are liable for partition? If so, what is the share of the plaintiff?

5. To what relief?

10. Respondent-plaintiff has amended the plaint and six more properties were added to the schedule which are item Nos.8 to 13. It is worth mentioning that there is no pleading with regard to item Nos.8 to 13 properties except amending the schedule.

11. After amending the schedule, appellant Nos.1 to 3-defendant Nos.1 to 3 filed their additional written statement and contended that respondent-plaintiff is not the son of late Beeraiah and he is not entitled for any share in suit schedule properties No.1 to 13, and that the suit is barred by limitation.

12. By the time the plaint is amended, the evidence of the respondent-plaintiff is closed and the same was coming up for defendant evidence (appellants herein). As the learned trial Court was of the opinion that no additional issues will arise and thereafter posted the matter for further evidence of the appellants-defendants.

13. Respondent-plaintiff is examined as PW.1, and he also examined PW.2-B Shankaramma, PW.3-Avunuri Narsaiah, got marked Exs.A1 to A23. Appellant No.1 is examined as DW.1 and appellant No.2 is examined as DW.2, DW.3-Ch.Rajam and PW.4-Jummidi Rayamallu.

14. The learned trial Court has decreed the suit as prayed for.

15. In Dolgobinda Paricha case1, the Supreme Court observed at Para Nos.6 and 7 which reads as under:

“6. The Evidence Act states that the expression ' facts in issue 'means and includes any fact from which either by itself or in connection with other facts the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follow; 'evidence' means and includes (1) all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry ; and (2) all documents produced for the inspection of the court. It further states that one fact is said to be relevant to another when the one is connected with the other in any one of the ways referred to in the provisions of the Evidence Act relating to the relevancy of facts. Section 5 of the Evidence Act lays down that evidence may be given in any suit or proceeding of the existence or non-existence of every, fact in issue and 'of such other facts as are declared to be relevant and of no others. It is in the context of these provisions of the Evidence Act that we have to consider Section 50 which occurs in Chapter II, headed “Of the Relevancy of Facts”. Section 50, in so far as it is relevant for our purpose, is in these terms. On a plain reading of the section it is quite clear that it deals with relevancy of a particular fact. It states in effect that when the court has to form an opinion as to the relationship of one person to another the opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact. The two illustrations appended to the section clearly bring out the true scope and effect of the section. It appears to us that the essential requirements of the section are-(1) there must be a case where the court has to form an opinion as to the relationship of one person to another; (2) in such a case, the opinion expressed by conduct as to the existence of such relationship is a relevant fact; (3) but the person whose opinion expressed by conduct is relevant must be a person who as a member of the family or otherwise has special means of knowledge on the particular subject of relationship; in other words, the person must fulfil the condition laid down in the latter part of the section. If the person fulfils that condition, then what is relevant is his opinion expressed by conduct. Opinion means something more than more retailing of gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. Now, the 'belief' or conviction may manifest itself in conduct or behaviour which indicates the existence of the belief or opinion. What the Section says is that such conduct or outward behaviour as evidence of the opinion held is relevant and may, therefore, be proved.

7. It is necessary to state here that how the conduct or external behavior which expresses the opinion of a person coming within the meaning of Section 50 is to be proved is not stated in the section. The section merely says that such opinion is a relevant fact on the subject of relationship of one person to another in a case where the Court has to form an opinion as to that relationship. Part II of the Evidence Act is headed "On Proof". Chapter III thereof contains a fascicule of sections relating to facts which need not be proved. Then there is Chapter IV dealing with oral evidence and in it occurs S. 60 which says inter alia:

"Section 60. Oral evidence must, in all cases whatever, be direct; that is to say- if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds."

If we remember that the offered item of evidence under S. 50 is conduct in the sense explained above, then there is no difficulty in holding that such conduct behaviour must be proved in the manner laid down in S. 60; if the conduct relates to something which can be seen, it must be proved by the person who saw it; if it is something which can be heard, then it must be proved by the person who heard it; and so on. The conduct must be of the person who fulfils the essential conditions of S. 50, and it must be proved in the manner laid down in the provisions relating to proof. It appears to us that that portion of S. 60 which provides that the person who holds an opinion must be called to prove his opinion does not necessarily delimit the scope of S. 50 in the sense that opinion expressed by conduct must be proved only by the person whose conduct expresses external the opinion. Conduct, perceptible fact, may be proved either by the testimony of the person himself whose opinion is evidence under S. 50 or by some other person acquainted with the facts which express such opinion, and as the testimony must relate to external facts which constitute conduct and is given by persons personally acquainted with such facts, the testimony is in each case direct within the meaning of S. 60. This, in our opinion, is the true inter-relation between S. 50 and S. 60 of the Evidence Act.

S. 50 affords an exceptional way of proving a relationship and by no means prevents any person from stating a fact of which he or she has special means of knowledge, we do not agree with Hutchins J., when he says that the section seems to imply that the person whose opinion is a relevant fact cannot be called to state his own opinion as expressed by his conduct and that his conduct may be proved by others only when he is dead or cannot be called. We do not think that S. 50 puts any such limitation”.

16. Learned counsel for the respondent-plaintiff submits that father's name of the plaintiff is shown as Beeraiah, which is evident from Exs.A7 to A17 and they are public documents. Presumption has to be drawn that respondent-plaintiff is the son of Beeraiah.

17. In Smt. Aina Devi’s case2, Allahabad High Court observed at Para 9 which reads as under:

“9. Having perused the entire evidence on the record, I am unable to agree with the findings of the trial court. Purna Devi was shown to be the married wife of Bachan Singh in the extract from the electoral roll and the family register of the village. The extract of the family register of the villages also showed that the father of her three children was Bachan Singh. The trial court was in error in thinking that the entries in the family register had to be proved by evidence aliunde. The family register was a public document. The entries made therein were proved by the certified copy of the extract, vide, Ext. II. The document proved its content's. The entries were presumptive evidence of what they recorded, until disproved by satisfactory evidence to the contrary. The burden was on the respondents to prove that the entries were incorrect. The same applies to the certified copy of the extract from the electoral roll, Ext. I”.

18. In Chitru Devi’s case3, High Court of Himachal Pradesh observed at Para No.23 which reads as under:

“23. The next contention of the learned counsel for the plaintiff that no reliance can be placed on voter lists mark Exts. DA, DB and DC showing Smt.Tap Dassi wife of Teku as these documents pertain to the years 1981, 1983 and 1988 respectively and no voter list prior to the said period was brought on record by the defendants to prove their claim. These voter lists were prepared by the competent official of the election department in the discharge of his official duties and the plaintiff has never challenged correctness and validity of the voter lists before the competent authority in any proceedings. The learned first Appellate Court has rightly relied upon the voter lists to prove that Smt. Tap Dassi was the wife of Teku. The electoral roll is a public document and admissible in evidence unless it is rebutted by cogent and reliable evidence. The plaintiff has failed to rebut the entries recorded in the electoral roll and on the basis of the documentary evidence proved on record, I find no cogent reason to differ with the conclusion arrived at by the first Appellate Court that Smt. Tap Dassi was the wife of Teku and out of their wedlock Sidhi Singh was born whose legal representatives are defendants 1 to 3 in the suit and thus they are entitled to inherit the estate of Teku”.

19. It is the respondent-plaintiff who has to prove that his mother Banamma has married Godari Beeriaiah and out of lawful wedlock he is born.

20. The respondent-plaintiff stated in his cross-examination that he do not know whether one Lasmaiah was the first husband of Banamma, and he do not know when his mother has married Godari Beeraiah, so also he do not know in which year his mother has deserted him. After deserting Godari Beeraiah, his mother has married another person by name Seggem Madanaiah, and she has begotten 4 children, and at present, she is living at Andugulapeta of Mandamarri Mandal, and he do not know the names of the four children born through Seggem Madanaiah. Beeraiah was the resident of Sunnambatti Wada of Mancherial town, and he do not know the date of his death, in the Appointment Order his address is mentioned as resident of Jenda Venkatapur of Chiennur Taluq, witness adds that he was brought up by his maternal uncle and in the family attendance book his address is shown at resident of Narva, Jaipur Mandal, so also in the sale deed, gas papers, and other documents no where it is mentioned that he is resident of Mancherial. He did not give any instructions to his counsel that his maternal uncle has brought him up. Until filing of the suit, no legal

notice is issued claiming share in the schedule properties. Before he secured a job, he lived at Venkatapur, and he cannot give the boundaries of the property covered under Exs.A18 to A23, and the names of the appellant Nos.1 to 3-defendant Nos.1 to 3 are shown as pattedars and possessors in the above said exhibits, so also he did not file any document to show that property covered by Exs.A18 to A23 belong to Godari Beeraiah. PW.1 denied the suggestion that Godari Beeraiah never married his mother by name Banamma, and that he is not the son of Beeraiah. So also he did not participate in the Final rights and that he is not entitled for a share in the suit schedule properties.

21.1. PW.2 is the sister of Godari Beeraiah. She deposed that Godari Beeraiah married one Posamma, they are blessed with three sons who are the appellant Nos.1 to 3 - defendant Nos.1 to 3, and thereafter Beeraiah has married a divorcee by name Banamma and through Banamma they are blessed with the respondent-plaintiff when the respondent-plaintiff was two years old, Banamma has left her brother Beeraiah and married another person by name Chegyama Madhunaiah, resident of Andugulapet Village of Mandamarri, Mandal. And the respondent-plaintiff was taken by his maternal uncle by name Bandari Posham and he was brought up there at. Godari Beeraiah died about 15 years back at Chunnambattiwada of Mancherial Town, and the death message was given to the respondent-plaintiff, he attended the obsequious of Beeraiah. Godari Beeraiah possesses properties at Garmilla Village, and they are in joint possession of the respondent-plaintiff and appellant Nos.1 to 3-defendants.

21.2. In her cross-examination, she stated that Godari Beeraiah has married Poshamma and Poshamma gave birth to defendant Nos.1 to 3 (appellant Nos.1 to 3 herein), and she do not know when Poshamma died and his brother Beeraiah used to reside in Saikuntawada Mancherial till his death. Banamma is the mother of plaintiff (respondent here). First husband of Banamma is Doota Lasmaiah, he is still alive, and she do not know whether divorce of Banamma and Doota Lasmaiah took place. Her brother by name Beeraiah brought Banamma to his house by purchasing sarees and blouses, and her brother has not married said Banamma, Beeraiah has brought Banamma to look after his children. Banamma has married another person by leaving the plaintiff (respondent herein) at the house of his maternal uncle, and she came to know that she married one Madanaiah and she do not know the date of birth of the plaintiff, his birth has taken place in Mamidigattu Venkatapuram. She do not know that Banamma gave birth to 4 children out of the wedlock with Madanaiah, and she do not know in whose name the Patta stands with regard to the suit schedule property, so also she do not know whether the pedigree submitted by Beeraiah to the Bank, the name of the plaintiff is not mentioned, and the plaintiff is having six children. PW.2 denied the suggestion that Banamma is neither the legally wedded wife nor mistress of Beeraiah, and that Beeraiah has not brought Banamma by presenting sarees and blouses, and that the plaintiff is not the son of Beeraiah through Banamma.

22.1. PW.3 deposed that Late Godari Beeraiah has seven properties in Garimalla Shivar of Mandal Mancherial and they are the joint properties of the respondent-plaintiff, appellant Nos.1 to 3 -defendants Godari Beeraiah has first married Poshama and they are blessed with defendant Nos.1 to 3 (appellant herein). Godari Beeraiah has married Banamma and through her, they are blessed with the plaintiff (respondent herein). After the birth of the plaintiff, Banamma left Godari Beeraiah by leaving his son, and

thereafter, his maternal uncle by name Bandari pocham, resident of Jenda Venkatapur Village, took away the plaintiff when he was 3 or 4 years old. Plaintiff is entitled for 1/4th share in the suit schedule properties.

22.2. In his cross-examination, he stated that plaintiff never resided at Mancherial. Beeraiah has married Banamma, who is the resident of Jenda Venkatapur of Nennal Mandal after one year of the death of Pochamma, and he do not know the first marriage of Banamma, he do not know whether Banamma has again married during the lifetime of Beeraiah, So also he do not know whether she is still alive or not. PW.3 denied the suggestion that plaintiff is not the son of Beeraiah, and that he is not entitled for any share.

23. It is worth mentioning that PW.2 and PW.3 spoke about suit schedule property Nos.1 to 7 only contending that they are in joint possession of the plaintiff (respondent herein) and defendants (appellant Nos.1 to 3 herein). And there is no evidence with regard to other properties i.e., schedule property Nos.8 to 13 which were added by way of amendment of the suit vide IA.No.248 of 2014, dated 29.06.2015.

24.1. The evidence of DWs.1 and 2 is the same as that of their written statement.

24.2. DW.1 stated in his cross-examination that his father’s sister by name Sankaramma is still alive and there are boundary disputes between them with that of Sankaramma. Item Nos.1, 2 and 6 are the ancestral properties and the remaining property is acquired by him and his brothers. Item Nos.8, 11 and 13 are also the ancestral properties, whereas item Nos.9, 10, and 12 are the properties acquired by him and his brothers and there are registered sale deeds for all the properties acquired by them, he has not filed them. He has no prior acquaintance with the plaintiff and the mother of the plaintiff is Banamma. His mother died about 35 years back. DW.1 denied the suggestion that after the death of his mother by name pochamma, his father Beeraiah has married Banamma and through them, the plaintiff is born. DW.1 also denied the suggestion that plaintiff has participated in the death ceremony of his father and bore his share of expenses at that time and that the plaintiff is entitled for 1/4th share in the suit schedule properties. Plaintiff is working in Singareni Collieries, and he do not know whether in the service records of the plaintiff and also in the revenue records, his father's name is mentioned as Godari Beeraiah.

24.3. DW.2 stated in his cross-examination that he do not know Seggam Banamma and Seggam Madunaiah. So also, he do not know Dutha Laxmaiah @ Lachulu of Mudigunta Village and he know PW.3, who acted as elder at Sunnambatti Wada of Mancherial. Plaintiff is an employee in Singareni Collieries, and he do not know whether in the Academic records and Employment records of the plaintiff, his surname is mentioned as Godari. Witness adds that he came to know that father name of the plaintiff was mentioned as Godari Beeraiah in Education records and Employment records. Except the property in Sy.Nos.669, 670 and 671 other properties are the ancestral properties, they are acquired by him and other defendants. DW.2 denied the suggestion that after the death of his mother Posamma, his father has married Banamma and that the plaintiff is their son, also denied the suggestion that after the birth of the plaintiff, his mother (Banamma) left the plaintiff and her husband, and since then plaintiff was brought up by his maternal uncle by name Bandari Pocham of Jenda Venkatapur Village in Ninnel Mandal. DW.2 also denied the suggestion that plaintiff is entitled for 1/4th share in the suit schedule property.

24.4. DW.3 is an independent witness. His evidence is that the plaintiff has no manner of right whatsoever over the suit schedule property and he is not the son of Beeraiah, and the defendants have inherited the properties of late Godari Beeraiah, who is having lands in Garimalla Village of Mancherial Mandal. In his cross-examination, he stated that all the defendants live in one house and he is an agriculturist. He denied the suggestion that by taking money he is giving evidence in favour of the defendants.

24.5. DW.4 is the relative of the defendants, his evidence is that Godari Beeraiah has married Godari Posamma, out of lawful wedlock, they are blessed with defendant Nos.1 to 3 (appellant Nos.1 to 3 herein) and after the death of Posamma, Godari Beeraiah did not perform any marriage with anybody and that the plaintiff is not the son of Godari Beeraiah son of Mallaiah, he has never seen the plaintiff in the house of his maternal uncle by name Godari Beeraiah, and he do not know who is Seggam Banu @ Banamma. Beeraiah died on 15.07.1998 and the plaintiff is not at all concerned with the family of Godari Beeraiah. Plaintiff is no way concerned with the suit schedule lands, and the lands are in possession of D1 to D3, and Patta was transferred in their names. The plaintiff has filed the suit with an intention to grab the suit schedule properties of the defendants by impersonating himself as son of Godari Beeraiah.

24.6. In his cross-examination, he stated that he did not bring any documents to prove that his mother is the own sister of Beeraiah. He denied the suggestion that his mother is not the blood relative of Beeraiah and that he is giving false evidence at the instance of defendants, and the plaintiff is also son of Godari Beeraiah through his second wife.

25. PW.2 and PW.3 have stated in their evidence that the plaintiff was brought up by Bandari Posham when Banamma has left the company of Godari Beeraiah. It is not the case of the respondent-plaintiff that he was brought up by his uncle by name Bandari Posham and there is no pleading to that effect. It is worth mentioning that Banamma is still alive and the respondent-plaintiff did not examine his mother to substantiate his contention that his mother's marriage is performed with Godari Beeraiah after the death of Posamma. Respondent-plaintiff has with held the best evidence for the reasons best known to him. Respondent-plaintiff has failed to prove that Banamma has married Godari Beeraiah. The admissions made by the respondent-plaintiff in his cross-examination is sufficient to come to a conclusion that the marriage of Banamma with Godari Beeraiah is not proved. Respondent-plaintiff also do not know the date of death of late Beeraiah. PW.2 who happens to be the sister of Godari Beeraiah admitted in her cross-examination that the first husband of Banamma is Doota Lasmaiah, who is still alive, and she do not know whether divorce of Banamma has taken place with Doota Lasmaiah, and her further admission is that her brother Godari Beeraiah has not married Banamma, she was brought to look after the children and Banamma has married one person by name Madanaiah.

26. As rightly contended by the learned Senior Counsel for the appellants that Exs.A7 to A17 do not help the case of the respondent-plaintiff, in view of the fact that the documents were issued by various authorities based on the declaration given by the respondent-plaintiff. Respondent-plaintiff has not filed any record to show that his father's name is Godari Beeraiah such as School certificate, Date of Birth certificate, Birth certificate. In absence of the above said documents, it cannot be said that the respondent-plaintiff is born to Banamma through Godari Beeraiah. The admission made by PW.2 is sufficient that Godari

Beeraiah has not married Banamma and she was brought to look after the children.

27. The decision cited by the respondent counsel in Smt.Aina Devi's case is dealt under Hindu Marriage Act and the decision in Chitru Devi's case is in respect of a declaration suit that they are the owners and possessors of the land mentioned therein. The facts in the above said decision differ with the facts of the present case, and they are not applicable.

28. The decision cited by the appellant's counsel in Dolgobinda Paricha's case1 is squarely applicable to the case on hand.

29. The learned trial Court has misread the evidence adduced by the parties and failed to note the admissions made by PW.1 and PW.2 in their cross-examination and wrongly arrived at a conclusion that the respondent-plaintiff is the son of Banamma and Godari Beeraiah and he is the legal heir along with the defendant Nos.1 to 3 (appellant Nos.1 to 3 herein), when the factum of the marriage of Banamma with that of the Godari Beeraiah is not proved.

30. The respondent-plaintiff has also not produced any academic record to show that his father's name is shown as Godari Beeraiah i.e., Birth certificate, School leaving certificate, etc., and the best part is that Banamma who is still alive is not examined in the case. The Judgment of the learned trial Court suffers from perversity and suit is filed by the respondent-plaintiff after 13 years of the death of Godari Beeraiah. Furthermore the respondent-plaintiff has not shown any reason for the delay and as rightly contended by the Senior Counsel that Exs.A7 to A17 are issued by various authorities based on the declarations given by the respondent-plaintiff.

31. In view of the reasons above, this Court is of the view that the judgment of the learned trial Court suffers from perversity and illegality, and the same is liable to be set aside, and is accordingly set aside.

32. In the result, AS.No.160 by 2017 is allowed, and the judgment and decree passed by the III Additional District Judge, Asifabad, in OS No.9 by 2016 dated 06.01.2017 is set aside. Consequently, the suit filed by the respondent-plaintiff is dismissed without costs.

Interim Orders if any, stands vacated. Miscellaneous application/s stands closed.