(2008) 04 AP CK 0004

Andhra Pradesh High Court

Case No: S.A. No. 442 of 1996

Ravada Yerranna (Died) per L.Rs.		APPELLANT
	Vs	
Ravada Thammunaidu (Died) per L.Rs. and Others		RESPONDENT

Date of Decision: April 22, 2008

Acts Referred:

- Charitable and Religious Trusts Act, 1920 - Section 5(3)
- Civil Procedure Code, 1908 (CPC) - Section 100

Citation: (2008) 4 ALD 59 : (2008) 3 ALT 468

Hon'ble Judges: G. Chandraiah, J

Bench: Single Bench

Advocate: N. Subba Reddy, for the Appellant; Muvva Chandrasekhar Rao, for the Respondent

Final Decision: Dismissed

Judgement

G. Chandraiah, J.
Heard both the counsel.

2. Aggrieved by the judgment and decree dated 30.07.1996 passed by the court of Subordinate Judge at Chodavaram in A.S. No. 25/1989 in allowing the appeal by reversing the judgment and decree dated 14.2.1989 passed by the court of Principal District Munsif, Chodavaram in O.S. No. 173/1983 and thereby dismissing the suit for injunction, the plaintiffs filed the present appeal.

3. During the pendency of the first appeal, the original plaintiff died and his legal representatives were brought on record. The original 1st defendant also died during the pendency of the second appeal and by order dated 7.11.2000 in CMP. No. 6835/1998, his legal representatives were brought on record.

4. For the sake of convenience, the parties will be referred to as per their array in the original suit.

5. The case of the plaintiff is that in the partition between himself and his brothers that took place about fifty years back, he got Ac.1-00 of wet and dry lands. Thereafter, out of his own efforts, he purchased the suit A and B schedule properties with the income he got from the trade in cattle and vegetables. There was no sufficient ancestral nucleus for him to acquire the plaint schedule properties. Therefore, the suit schedule properties are his self acquired properties. His further case is that, after the death of his wife Ramayamma and his concubine Bandaru Yerukkamma, he married one Chinna as per caste customs in the form of manumu marriage. The 1st defendant is his illegitimate son through Bandaru Yerukkamma. Both the plaintiff and Chinna brought up the 1st defendant and performed his marriage. The 1st defendant has been living separately for the last fifteen years and thus the plaintiff alone is in possession and enjoyment of the suit schedule properties and that the 1st defendant has no right or possession in those properties, but he is trying to sell away some of the suit properties for a nominal price to meet the expenses for his vices. On 12.6.1983 the 1st defendant followed by other defendants threatened the plaintiff with dire consequences if he entries into any of the suit schedule properties. Hence, the plaintiff filed the suit for injunction.

6. The 1st defendant filed written statement and while denying the averments made in the plaint, stated that after the death of plaintiff''s wife, he married the mother of the 1st defendant as per caste customs and later developed illicit intimacy with her sister by name Chinna and after the death of his mother, the said Chinna started staying in the house of the plaintiff and bore children through him without any lawful marriage. The suit schedule properties are the joint family properties of the plaintiff, himself and other family members. The properties mentioned in the written statement fell to his share in the oral family arrangement for partition, which took place in the year 1977 and since the said partition, himself, plaintiff and other family members have been enjoying their respective shares exclusively, acting individually and making individual transactions in their own right. The plaintiff has no right or title, whatsoever in the properties that fell to his share. The suit is filed vexatiously, to harass him and to have unlawful gain. It is further averred that the suit is bad for mis-joinder and non-joinder of the sons of the plaintiffs. With these averments, the 1st defendant sought for dismissal of the suit.

7. The 4th defendant filed counter and while supporting the averments of the 1st defendant in the written statement, further stated that the he is a bona fide purchaser of some of the suit schedule properties which fell to the share of the 1st defendant in the family arrangement, for a valuable consideration under two sale deeds dated 16.3.1983 and 28.4.1983 in respect of the properties in S. No. 209/18 of K.Kotapadu village along with the foundation and partly raised walls and later sold away to one Cherukuri Eswara Rao under a sale deed dated 7.5.1983 for

consideration. Hence, the 4th defendant and the said Cherukuri Eswara Rao are in possession of their properties and neither the plaintiff nor the 1st defendant have any right. With these averments, the suit was sought to be dismissed.

8. Based on the above pleadings, the trial court framed the following issues for trial:

1. Whether the plaintiff is in possession of the plaint schedule properties by the date of filing of the suit, if so, the plaintiff is entitled for injunction?

2. Whether the suit is bad for mis-joinder and non-joninder of parties?

3. Whether the plaintiff is entitled for injunction?

4. Whether D-4 is not a bona fide purchaser from D-1 of the properties covered by the sale deeds dated 16.3.1983 and 28.4.1983 and D-1 and his vendee Ch.Eswara Rao are in possession of the properties?

5. To what relief?

9. In support of the case of the plaintiff, he got examined himself as P.W.1 and also got examined P.Ws.2 to 5 and exhibited Exs.A-1 to A-33. On behalf of the defendants, the 1st defendant was examined as D.W.1 and further got examined D.Ws.2 to 5 and got marked Exs.B-1 to B-19.

10. After considering the evidence on record, the trial court answering all the issues in favour of the plaintiff, decreed the suit.

11. Aggrieved by the judgment and decree of the trial court, the 1st defendant filed appeal and the lower appellate court, based on the material on record, framed the following issues for consideration:

1. Whether the plaint schedule properties are the ancestral properties and that the purchases made by the 1st respondent are from out of the exertions of the joint family and with the ancestral nucleus?

2. Whether the 1st appellant/1st defendant is the legitimate son of the deceased 1st respondent/plaintiff through Yerakkamma?

3. Whether the 1st Appellant/1st defendant is a co-parcener of the respondents and as such the injunction cannot be granted against him?

4. Whether the family arrangement and the partition alleged by the 1st appellant/1st defendant are true?

5. Whether the properties stated by the 1st appellant/1st defendant in paragraph No. 5 of his written statement as having fallen to his share have anything to do with the plaint ''A'' and ''B'' schedule properties?

6. Whether the plaint schedule properties are the exclusive properties of the defendants 1 and 4 and that they have got every right to alienate them?

7. Whether the judgment and decree of the lower court are sustainable?

12. The lower appellate court on re-appreciation of the entire evidence, by setting aside the findings of the trial court, held that the suit schedule properties were acquired by the plaintiff from out of the ancestral nucleus and thus they became ancestral properties as well as the joint family properties. The lower appellate court also held that the 1st defendant is the legitimate son of the plaintiff through Yerakkamma. The lower appellate court further held that the plaintiff and the 1st defendant constitute coparceners, but they were possessed of their respective shares of the joint family property by virtue of the partition. With regard to fifth issue, the lower appellate court held that there is no sufficient material placed before the court to show that the lands mentioned by the 1st defendant in paragraph No. 5 of the written statement have fallen to his share and that they have nothing to do with the plaint ''A'' and ''B'' schedule properties and accordingly this issue negatived. With regard to sixth issue, it is held that certain properties mentioned in B schedule properties belong to the 1st defendant and out of which, he sold the land to 4th defendant. In the light of the above findings and as the plaintiffs failed to prove his possession over all the plaint ''A'' and ''B'' schedule properties, the lower appellate court reversing the judgment ad decree of the trial court, allowed the appeal and thereby dismissed the suit for injunction. Aggrieved by the same, the present second appeal is filed and this Court on 12.8.1996 issued notice before admission.

13. The learned senior counsel Sri N.Subba Reddy, appearing for the appellants/plaintiffs made elaborate arguments and contended that the burden is on the 1st defendant to prove that there is sufficient nuclear from out of which the suit schedule properties were purchase and only after the discharge of the said burden, it shifts on to the plaintiff to prove that the properties are the self acquired properties. He submitted that the lower appellate court has erroneously placed the burden on the plaintiff. He submitted that merely because of the existence of joint family, does not lead to the presumption that the property is the joint family property. As the 1st defendant failed to his discharge his burden in showing that there was sufficient nucleus, it has to be held that the property is the self acquired property. In support of his contention, the learned Senior Counsel for the appellants relied on the judgment of the Apex Court reported in AIR 2003 3800 (SC) He submitted that the plaintiff got only one acre of wet and dry land and the same is not sufficient to purchase the suit schedule properties and by doing cattle and vegetable business, which is spoken even by P.W.3, who is the maternal uncle of the 1st defendant, he acquired the suit schedule properties. The lower appellate court by not properly appreciating the evidence on record, held that the property is acquired from the joint family nucleus. With regard to oral family arrangement for partition pleaded by the 1st defendant, relying on the judgment of the Apex Court reported in Chinthamani Ammal Vs. Nandagopal Gounder and Another, he submitted that the burden is on the 1st defendant, as he raised the plea of partition

and in the event of failure to discharging the burden, it has to be presumed that the property continued to be joint and further mere separate possession of sharers by co-sharers will not lead to the presumption that there was partition. He submitted that as the 1st defendant failed to prove that there was partition with cogent and convincing evidence, the lower appellate court is not right in believing the partition pleaded by the 1st defendant. He submitted that the case of the plaintiff is that the 1st defendant is his illegitimate son and the evidence of P.W.3 who is the material uncle of the 1st defendant also supports the same, since he deposed that there was no legal marriage between the plaintiff and the mother of the 1st defendant. In the light of this evidence available on record, the lower appellate court is not justified in recording the finding that the 1st defendant is the legitimate son of the plaintiff. He submitted that the lower appellate court is misdirected in appreciating the evidence on record. He also submitted that the lower appellate court by not properly appreciating the evidence on record, recorded perverse findings and it constitute substantial question of law for interference of this Court u/s 100 C.P.C. and hence sought for setting aside the judgment and decree of the lower appellate court and confirm the judgment and decree of the trial court.

14. On the other hand, the learned Counsel Sri Muvva Chandrasekhar Rao, appearing on behalf of the 1st defendant/respondents made elaborate arguments and taking this Court through the evidence on record and relying on the judgments of the Apex Court, which will be referred to in the course of the judgment, supporting the judgment and decree of the lower appellate court, sought for dismissal of the appeal.

15. In order to appreciate the above rival contentions and to see whether there exists any question of law, which is substantial, it is necessary to look into the case of the respective parties and to re-examine the evidence available on record and the findings in that regard, recorded by the courts below.

16. The case of the plaintiff is that the suit schedule properties are his self acquired properties and the Ac.1-00 of wet and dry lands which he got in partition from his brothers, which forms the ancestral nucleus, is not sufficient to purchase the suit schedule properties and by doing trade in cattle and vegetables, he acquired the suit schedule properties. The defendant who is his illegitimate son, is not having any right over the suit schedule properties and as he is interfering with his possession, he filed the suit. On the other hand, the case of the 1st defendant is that he is the legitimate son of the plaintiff and the suit schedule properties are the joint family properties of the plaintiff and this defendant and other family members and the properties mentioned in the written statement fell to his in a family arrangement for partition that took place in the year 1977 and since then, each party is in exclusive possession and enjoying of the property, making independent transactions and hence the suit is not maintainable. However, the other defendants are the purchasers of the suit schedule properties through the 1st defendant and hence

their claim would depend on the rights of the 1st defendant.

17. From the above, in order to grant the relief of injunction, the incidental controversies that have fallen for consideration are (1) whether the suit schedule properties are the joint family properties or the self-acquired properties of the plaintiff? (2) whether the 1st defendant is the legitimate son of the plaintiff and thus a coparcener? and (3) whether there was partition in the year 1977 as pleaded by the 1st defendant and that the suit schedule properties fell to his share?

18. With regard to first issue, the contention of the counsel for the appellants/plaintiffs, relying on the judgments of the Apex Court is that since the claim of the 1st defendant is that the suit properties are joint family properties, the burden is on him to prove that they are joint family properties and that the ancestral nucleus was sufficient to purchase the suit schedule properties and if he discharges the said burden, then the burden shifts on to the plaintiff to prove that they are self acquired properties and the lower appellate court by not considering this principle, placed by the burden on the plaintiff and held that the property is the joint property and hence the same is liable to be set aside.

19. It is to be first noticed that the present suit is for injunction and the incidental question as note above, is with regard to the nature of the property. In the judgments relied on by the counsel for the appellants, the suits were filed for partition and the claim of the plaintiffs therein was that the property was joint family property and the contention of the defendants was that the suit properties were self acquired properties. In the present case, the situation is quite contrary i.e., the claim of the plaintiff herein is that the suit schedule property was his self acquired property and while admitting the ancestral nucleus, his case is that the same was not sufficient to purchase the suit schedule properties and on the contrary the case of the 1st defendant is that the suit schedule properties are the joint family properties. Therefore, the law laid down in those judgments cannot be made squarely applicable to the facts of the present case. Further both the parties have lead evidence in support of their respective case. In these circumstances, on whom the burden lies, will become a mere academic issue. The Apex Court in the decision reported in Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others, held that when the parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic issue. The relevant portion of the judgment with necessary contentions therein, is extracted as under for better appreciation:

10. The appellant contended that this was a special suit u/s 5(3) of the Charitable and Religious Trusts Act, 1920 and that the burden lay upon the respondents to prove that there was a religious and charitable trust of a public character in favour of the deity. He contended that the two courts below had placed the burden of proof upon him to show by positive evidence that the deity was a family diety, and that the

properties were his private properties. According to him, the defendants ought to have proved their case, and if they failed to prove affirmatively that case, then the suit ought to have been decreed in his favour. The expression "burden of proof" really means two different things. It means sometimes that a party is required to prove an allegation before judgment can be given in its favour; it also means that on a contested issue one of the two contenting parties have to introduce evidence. Whichever way one looks, the question is really academic in the present case, because both parties have introduced their evidence on the question of the nature of the deity and the properties and have sought to establish their own part of the case. The two Courts below have not decided the case on the abstract question of burden of proof; nor could the suit be decided in such a way. The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail. Where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic.

20. Now, I would like to consider whether the plaintiff could prove his case and whether the same has been properly considered by the courts below in the light of the evidence available on record. The case of the plaintiff is that in the partition with his brothers, he got Ac.1-00 of wet and dry land and afterwards with his exertions, by doing business in cattle and vegetables, he purchased the plaint ''A'' and ''B'' schedule properties. The case of the 1st defendant while denying that the plaintiff did any cattle and vegetable business, is that some of the suit schedule property is the ancestral property and the remaining property is purchased with the income from the ancestral property and hence it is joint family property.

21. To prove his case, the plaintiff was examined as P.W.1. In the chief examination he reiterated the averments made in the plaint with regard to the ancestral nucleus. In the cross-examination, he deposed that his eldest brother managed the family after the death of his father and that himself and his brothers became divided ten years after his father''s death.

22. The 1st defendant got examined the elder brother of the plaintiff as D.W.2, who was aged 104 years as on the date of the giving evidence before the trial court. He deposed that himself and his brothers partitioned their lands after the death of their father and they got Acs.5-00 of wet and dry land for each share and he had earned some more lands to an extent of Acs.12-00 and the plaintiff earned about Acs.25-00, both wet and dry lands by doing cultivation and also by raising income from his coconut business. Even during cross- examination, he reiterated that the plaintiff has got Acs.5-00 of land in total in partition and he specifically denied the suggestion that the plaintiff used to do vegetable business.

23. From the evidence of D.W.2, it could be could be seen that in the partition between his brothers, the plaintiff got Acs.5-00 of land. The son of D.W.2 was

examined on behalf of the plaintiff as P.W.4. In his cross-examination, he deposed that the plaintiff earned the land by doing coconut and vegetable business from the income derived from the agriculture of the land. Therefore, the evidence of P.W.4 also establishes that the income is derived from the agriculture of the land. Further as noted by the lower appellate court, the purchases under Exs.A-1 to A-28 were ranging from 1943 to 1971 and further as per the evidence of P.W.4, the plaintiff was deriving income from agriculture of the land and the brother of the plaintiff who was examined as D.W.2 deposed that the plaintiff got Acs.5-00 of land in the partition. In these circumstances, as observed by the lower appellate court, it cannot be said that the ancestral nucleus was not sufficient for acquiring the properties and the ancestral nucleus extends from item to item which were purchased one after the other in a considerable length of time. Further, the plaintiff did not lead any cogent evidence to prove his independent income, except the assertion in the plaint. The evidence of P.W.4 cannot be taken to believe that the plaintiff was getting income from coconut and vegetable business, since he attributed this business from out of the income derived from the agriculture of the land. Further the plaintiff is the manager of the joint family and hence the sale deeds stood in his name and as per the evidence, there was no independent income and hence it can safely be concluded that there was joint family nucleus with which he purchased the land under Exs.A-1 to A-28. In this regard it is apt to note the law laid down in the judgment of the Apex Court in Doddi Atchayyamma Vs. Doddi Venkata Ramanna and Another, , in similar circumstances, as under:

...the properties which fell to the shares of Jogulu and Apanna (Jr) under Ex.A-6 were taken by them jointly and there is nothing to indicate that Jogulu had any separate income of his own from which he could have acquired the other properties. Having regard to the paucity of evidence, we are entitled to presume in the circumstances of the case that the properties acquired by Jogulu in his name were acquired with the income from the joint properties of himself and his natural son Appanna (Jr).

24. In the present case also as noted above, no evidence is forthcoming to show that the plaintiff had any independent and separate income and the above evidence clinchingly establishes that there was sufficient joint family nucleus and hence it can safely be presumed that the properties acquired by the plaintiff in his name, were with the income from the joint family properties.

25. In the light of the above evidence, I am of the considered view that the lower appellate court had rightly held that the plaint schedule properties were acquired with the joint family nucleus and they are not the self-acquired properties of the plaintiff. The trial court by not considering this overwhelming evidence available on record, had recorded a perverse finding and hence the lower appellate court has rightly set aside the same and recorded finding of fact in this regard, which warrants no interference of this Court.

26. The next issue is with regard to the legitimacy of the 1st defendant. The case of the plaintiff in the plaint is that the 1st defendant is his illegitimate son. He stated that after the death of his legally wedded wife Ramayyamma and his concubine Bandari Yerukkamma, he married one Chinna in manumu form as per his caste custom and that himself and the said Chinna had brought up the defendant No. 1, who is the illegitimate son of the plaintiff and celebrated his marriage. On the contrary, the case of the 1st defendant is that after the death of the wife of the plaintiff, he married the mother of this defendant as per caste custom and later developed illicit intimacy with Chinna who is no other than the sister of his mother and bore children through her, without any lawful wedlock. To resolve this issue, it is necessary to look into the evidences of the plaintiff as P.W.1, P.W.3, who is the brother of Bandari Yerukamma, i.e., the maternal uncle of the 1st defendant and D.W.2, who is the elder brother of the plaintiff, coupled with documentary evidence. In the plaint, the case of the plaintiff is that the 1st defendant is his illegitimate son through Bandri Yerukamma. Ex.B-1 is the legal notice issued by the plaintiff before filing the suit. In Ex.B-1 he stated that while the mother of the defendant No. 1 was living with her husband, Bandaru Police, the plaintiff developed illicit intimacy with her and eloped her and while they were living as wife and husband, the defendant No. 1 was born to them and that when the 1st defendant was about three months old, his mother died. From this evidence, the plaintiff has admitted in categorical terms that the 1st defendant is his son through Bandaru Yerukamma and they lived as husband and wife. But as P.W.1, the evidence of the plaintiff is quite contrary to his pleadings. His evidence before the court is to the effect that the 1st defendant was born to the sister of Chinnamma and that he did not know through whom the first defendant was born and he denied that he developed any intimacy with Yerukamma and that he had no relationship with her and he further denied the above contents in Ex.B-1. He also denied the suggestion that he married Yerukamma by manuvu form, after she came to her parent''s house after the death of Police. He admitted that he belongs to Koupalavelamma community and that there is a custom of remarriage among velmas. Therefore, as noted by the lower appellate court, the plaintiff has not approached the court with clean hands, since he had denied his own pleadings and the contents of the legal notice issued by him under Ex.B-1. P.W.3 is the brother of the said Yerukamma. He deposed that after the death of Police, (husband of the said Yerukkamma), Yerukkamma came away to his house and that he did not get Yeruakamma remarried after the death of her husband Police and that P.W.1 took away Yerukamma to his house as his wife and P.W.1 did not marry Yerukamma and that the defendant No. 1 was born to P.W.1 and Yerukamma, at his house. Further in the cross-examination of P.W.3, he deposed that 1st defendant has got right in P.W.1''s, property and that there is custom of remarriage among Velmas and that he reported the birth of the 1st defendant to the village munsif and that his sister was given in marriage to P.W.1 and that Yerukamma is his sister. Ex.B-11 is the birth register extract of the 1st defendant, showing the plaintiff as the father and Yerukamma as the mother of the

1st defendant. D.W.2 who is the elder brother of the plaintiff deposed that the 1st defendant is the son of the plaintiff through Yerukamma who is the legally wedded wife of the plaintiff and that their marriage took place in the presence of the elders. From a close scrutiny of the evidence of P.W.3 it could be seen that though there is inconsistent statement with regard to marriage of the plaintiff with Yerukamma, it is clear that the plaintiff has taken away the said Yerukamma as his wife and the 1st defendant is born to them. Even as per the admitted case of the plaintiff in the plaint is that defendant No. 1 is born to them and in Ex.B-1 legal notice, the plaintiff admitted that he and the said Yerukamma lived as wife and husband. Even in Exs.B-3 to B-7 sale deeds, the 1st defendant is described as the son of the plaintiff along with other sons viz., Kotibabu and Venkataramana. Further the elder brother of the plaintiff who was examined as D.W.2, stated that the plaintiff married the mother of the 1st defendant in the presence of elders. From the above it is clear that there is evidence to the effect that the plaintiff and Yerukamma lived as wife and husband for a considerable length of time after the death of the 1st wife of the plaintiff. In these circumstances, the strong presumption that can be drawn is that there is a valid wedlock, as deposed to by D.W.2. The Apex Court in the decision reported in S.P.S. Balasubramanyam v. Surutayan AIR 1993 SCW 3765 held that if a man and woman live together for long years as husband and wife, then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable. In the present, as noted above, the presumption, based on the evidence, is that there is valid marriage between the plaintiff and Yerukamma and the 1st defendant is born to them. The plaintiff did not lead any evidence to rebut the said presumption. Therefore from this it is clear that the plaintiff and Yerukakam lived as wife and husband and there was a valid wedlock and the 1st defendant was born to them.

27. Therefore, taking the evidence of P.W.3 who is the maternal uncle of defendant No. 1 and D.W.2, the elder brother of the plaintiff and the documents under Exs.B-11 and the sale deeds marked, the lower appellate court has rightly held that the mother of the 1st defendant is the legally wedded wife of the plaintiff and that the defendant No. 1 is the legitimate son of the plaintiff. The trial court by taking a stray sentence in the evidence of P.W.3 and oblivious of the above evidence, has recorded an erroneous finding in this regard and the same is rightly reversed by the lower appellate court. As the 1st defendant is the legitimate son of the plaintiff, he is a coparcener in the joint family property along with the plaintiff.

28. The case of the 1st defendant is that the properties mentioned in the written statement fell to his share as per the oral family arrangements for partition which took place in 1977 and since the said partition, himself, the plaintiff and the other members of the family, have been enjoying their respective shares of the properties exclusively, acting individually and making individual transactions in their own right. As already noted above, the lower appellate court by considering the evidence on record held that the property is joint family property and the 1st defendant is the

legitimate son of the plaintiff and thus a coparcener. The case of the 1st defendant is that in 1977 there was partition. In order to prove the partition, it is necessary to consider the sale transactions made by both the plaintiff and the 1st defendant. It is to be noticed that the defendant No. 1 got marked Exs.B-2 to B-6 which are the sale deeds executed by the plaintiff in the years 1981 and 1982 in favour of third parties and Ex.B-7 is the sale deed dated 29.4.1982 executed by the 1st defendant in favour of some third parties. As noted by the lower appellate court, the vendors under these documents described that those properties fell to their respective shares in the partition between them and that since the time of said partition they have been in enjoyment of those properties in their own rights. Further all these sale transactions are subsequent to the year 1977. It is also to be noticed that in Ex.B-8 sale deed dated 17.7.1982 executed by the 1st defendant and his sons, in favour of one Neeli Appa Rao, it is described that their ancestral land has fallen to their share and they are in possession and got absolute rights over the same. To this document, the plaintiff is one of the attestors. Similarly to the sale deed executed by the 1st defendant under Ex.B-7, the plaintiff is one of the attestors. Similarly to Exs.B-5 and B-6 sale deed executed by the plaintiff and his son Ravada Venkatramana in favour of third party, the 1st defendant was one of the attestors. Similarly to other sale deeds, either the plaintiff or the 1st defendant was one of the attestors. This clearly goes to show that there was partition in the year 1977 and each party is acting independently and the same is in the knowledge of the plaintiff, since he also signed as one of the attestors.

29. The case of the 1st defendant is that the properties mentioned in paragraph No. 5 of the written statement fell to his share. The lower appellate court after thorough scrutiny of evidence, held that except the land mentioned in SyNo. 209/18 the other lands mentioned by the first defendant in his written statement did not tally with the lands mentioned in the plaint ''A'' and ''B'' schedule properties with reference to their survey numbes and extents. However, since the plaintiff came forward for injunction, it is necessary to consider the case of the plaintiff, since the plaintiff cannot rely on the weakness of the defendant No. 1.

30. The claim of the plaintiff is that he is in possession of plaint A and B schedule properties and he filed Ex.A-30 pattadar pass book. As per Ex.A-30 total extent of Acs.4-99 cents of dry land covered by patta No. 793 and S. Nos. 254, 262/1 and 4 and 265/1 to 3, 6, 10, 12, 15 and 16 and 18 have been shown as in the possession of the plaintiff. The lower appellate court found that the lands mentioned in Ex.A-30 are not tallying with the plaint A and B schedule properties Further as already noted above, there was partition between the plaintiff and the defendants No. 1 and other sons of the plaintiff and each one has been enjoying the same independently and the plaintiff failed to produce any evidence to show that he is in possession of the suit schedule properties. In these circumstances, the lower appellate court by reversing the judgment of the trial court, rightly dismissed the suit for injunction.

31. The questions raised in this appeal are all questions of fact and the same have been thoroughly considered by the lower appellate court based on the evidence and negatived the same and since these being findings of fact based on evidence, cannot be interfered with in the second appeal. Further, I do not find any question of law, much less substantial, for interference of this Court u/s 100 C.P.C and accordingly the second appeal is dismissed. No costs.