

(2014) 07 AP CK 0034

Andhra Pradesh High Court

Case No: ASMP No. 2349 of 2010 in Appeal Suit No. 841 of 1998

Rupreddy Srinivas Reddy

APPELLANT

Vs

Rupreddy Krishna Reddy

RESPONDENT

Date of Decision: July 21, 2014

Acts Referred:

- Evidence Act, 1872 - Section 32

Citation: (2015) 3 ALD 128

Hon'ble Judges: M.S. Ramachandra Rao, J

Bench: Single Bench

Advocate: K.V. Bhanu Prasad, Advocate for the Appellant; K. Raja Reddy, Advocate for the Respondent

Judgement

M.S. Ramachandra Rao, J.

This appeal is filed challenging the judgment and decree dt. 28-08-1997 in O.S. No. 7 of 1983 of the II Additional Subordinate Judge, Warangal.

2. The appellants are plaintiffs in the suit. They filed the suit for partition of plaint A and B schedule properties and for allotment of 1/18th share therein to each of them and put them in possession thereof. Since the plaintiffs were minors as on the date of filing of the suit i.e. 25-01-1983, their maternal grandfather Ch. Narasimha Reddy filed it on their behalf as their guardian.

3. Late Linga Reddy is the father and Defendant No. 13 is the mother of Late Narayan Reddy, defendant Nos. 1, 8 and 9 and one Satyavathi. Linga Reddy died in 1977.

4. The 1st defendant is the father of plaintiffs. Narayana Reddy died in 1967. The 2nd defendant is the wife and defendant Nos. 3 to 7 are the children of Narayana Reddy. Defendant Nos. 10 to 12 are daughters of one Satyavathi, the younger sister of 1st defendant, who had died in 1975.

THE PLAINT

5. According to the plaintiffs, Linga Reddy and his two sons Narayanreddy and 1st defendant constituted a joint Hindu family governed by Mithakshara school of Hindu Law; the deceased Linga Reddy was it's Manager; in 1967 Narayana Reddy, husband of 2nd defendant died; by then defendant Nos. 3 to 7 were only children; plaint A and B schedule properties are ancestral and joint family properties held and possessed by the joint family and the plaintiffs and defendants are legally in joint possession thereof.

6. They contended that after the death of Narayana Reddy in 1967, 2nd defendant and 13th defendant and other women folk in the family could not put up together in the same house and there was no possibility for a peaceful and congenial atmosphere; the 2nd defendant had been residing in the family house (item-1 of B schedule); that late Linga Reddy with a view to avoid friction and a bad atmosphere in the family was trying to please 2nd defendant and he executed Ex. B-1 dt. 01-05-1970 in her favour releasing his rights therein stating that the said property was the sthreedhana property of 2nd defendant, which is incorrect; the said house was acquired from income out of the joint family properties and the family income; and 2nd defendant was not having any sthreedhana property as such nor was any such property utilized for acquisition of the house. The plaintiffs contended that item-1 of B schedule was constructed by late Linga Reddy himself and there is sufficient evidence to prove it including evidence that the entire construction was done utilizing their family funds. According to plaintiffs, properties were mortgaged, loans were obtained and construction was made with the family funds. They contended that in 1970, defendant No. 2 brought a lot of pressure on Linga Reddy and obtained Ex. B-1 release deed dt. 01-05-1970. They contended that disputes arose about partition of properties, matter was referred to certain elders and all parties were made to give statements before the said elders. According to them, Linga Reddy also made one statement before the elders on 04-03-1973, wherein he asserted that he executed Ex. B-1 under coercion, that item 1 of B schedule was never sthreedhana property of 2nd defendant and it was joint family property; and in view of this statement, Ex. B-1 is void and did not confer any right of 2nd defendant in respect of the house.

7. They further contended that during 1973-74, misunderstandings arose between parties and attempt was made to partition the properties. According to the plaintiffs, the elders decided to partition the agricultural properties but the same was not implemented because of the disagreement between the parties and defendant Nos. 1 and 2 were only tentatively put in possession in separate extent of lands. They admitted that 2nd defendant even sold some lands under her possession in favour of third parties but claimed that they were unaware of the details and particulars thereof. The plaintiffs contended that after coming into force of the AP Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short "the

Ceiling Act"), late Linga Reddy and 1st defendant, with a view to save as such land as possible belonging to 8th defendant, wrongly showed 1st defendant as the owner of the property belonging to 8th defendant and 1st defendant was made to file a separate declaration for the purpose of the said Act before the Land Reforms Tribunal, Karimnagar claiming exclusively the properties of 8th defendant. They admitted that late Linga Reddy and 2nd defendant also filed their separate declarations before the Land Reforms Tribunal, Warangal. They claimed that for the purpose of ceiling litigation, it was represented that 1st defendant was given some properties in Karimnagar District towards his share and he had no share in the plaint schedule agricultural lands situated in Nallagunta, Ramathpally and Venkatapur villages of Mulug Taluk. They contended that the entire proceedings before the authorities under the Act were not in accordance with the existing and subsisting rights of the properties and representations were made in those proceedings only for the purpose of saving the lands of 8th defendant using 1st defendant as a figure-head. They contended that defendant Nos. 1 to 7 began to take advantage of the proceedings under the Ceiling Act with a view to deprive 1st defendant of his lawful share of the plaint schedule properties; that 1st defendant, in view of the representations before the authorities under the Act and in view of the influence of defendant Nos. 2 to 8, did not take proper care and caution and totally neglected to protect the legal rights of the plaintiffs in the plaint schedule properties; that 1st defendant did not evince any interest in protecting the plaintiffs on account of fear or his relationship with other defendants and was acting under influence of the defendant Nos. 1 to 12; that their mother was also under the influence of 1st defendant; and only the maternal grandfather as next friend was looking after their interests. They contended that since all the plaint schedule properties are joint family properties, and since they are not parties to Ex. B-1 release deed executed by Linga Reddy in favour of 2nd defendant, they need not seek for any relief for its cancellation and they are entitled to ignore the same; and they are entitled to 1/18th share in all plaint schedule properties.

THE WRITTEN STATEMENT OF DEFENDANT NOS. 2-4

8. Defendant Nos. 2 to 4 filed common written statement on 30-03-1984 refuting the plaint averments. They contended that on the date of the death of late Linga Reddy in 1977, there was no joint family in existence and he was not its Manager. They denied that plaint A and B schedule properties are ancestral properties or that there were any disputes between 2nd defendant or 13th defendant or other lady members of the family. They contended that 2nd defendant was living in item-1 of B schedule and was also letting out the said house to rent and she was doing so in her capacity as exclusive owner and possessor of the same. They denied that with a view to avoid disputes in the family, Linga Reddy has released his right in favour of 2nd defendant. They asserted that the recitals in Ex. B-1 release deed dt. 01-05-1970 were true and valid and denied the allegation of the plaintiffs that the said house was constructed by Linga Reddy from out of funds of the joint family. They denied

that for the purpose of construction of the said house, lands were mortgaged or loans were obtained. They also denied that 2nd defendant put pressure on Linga Reddy and succeeded in getting Ex. B-1 from him.

9. They alleged that two years previously defendant Nos. 2 to 4 wanted to sell Ac. 2.00 cts. of their land at Nallagunta to one Ramanaiah and one Chandramouli but 1st defendant wanted to purchase it; 2nd defendant was not keen on selling to others and that she waited for about six months to enable 1st defendant to purchase them; but 1st defendant wanted to pay Rs. 6,000/- less than what the other purchasers were offering; 2nd defendant did not agree and 1st defendant then threatened the purchasers with dire consequences; in that connection elders of the village advised 2nd defendant to sell the land to whomsoever she pleases; the purchasers paid some earnest money but 1st defendant again threatened and reported the matter to the police taking advantage of fact that his father-in-law was a police patel and the purchasers did not finalize the transaction.

10. They contended that during his lifetime, Linga Reddy divided the lands two or three years prior to his death in the presence of some elders after ascertaining the boundaries and there were no statements recorded or any arbitration as such. They denied that any statement dt. 04-03-1973 was given by Linga Reddy about the alleged coercion etc., used by 2nd defendant. They contended that the partition affected two or three years prior to the death of Linga Reddy was not only implemented but had become final by the conduct of the parties and the plaintiffs were not correct to state that the parties were in tentative possession of separate extents of lands. They asserted that parties were in separate possession of the lands allotted to them in the partition. They asserted that when the Ceiling Act came into force, parties gave declarations according to their respective holdings; there was no excess lands to any of the parties; that 1st defendant is a well educated person employed in the Kakateeya University and would not give wrong declarations before the authorities under the Ceiling Act regarding his lands. They alleged that 1st defendant had suppressed to declare his lands at Nallagunta, Venkatapur and Raghunathpalli villages in the declaration filed by them to save some of his own lands and the proceedings under the Ceiling Act operate as estoppel against 1st defendant and consequently against the plaintiffs. They alleged that 1st defendant is the brain behind the filing of the suit.

11. They further contended that item-1 of B schedule is not joint family property and the other properties had been partitioned and in the said partition, their holding came to 0.6577 units under the Ceiling Act; that Linga Reddy also got to his share of similar extent of lands; item-2 of B schedule was also partitioned in 1978 or 1979 and the back portion thereof fell to the share of defendants; the land appurtenant thereto was also partitioned and in that partition, that defendant Nos. 2 to 4 got 10 guntas of land and they are in possession thereof. They denied that there were in joint possession with 1st defendant or other defendants and specifically contended

that defendant Nos. 1 and 2 were separately managing their properties, paying land revenues separately, dealing with their properties separately, had filed separate declarations and were living and having mess separately. They claimed that marriages of defendant Nos. 5 to 7 were performed by 2nd defendant with her own resources. They alleged that lands shown in schedule A are not exhaustive as lands in some survey numbers were not mentioned and that the plaintiff had not shown the lands at Jammikunta and Gumlapur at all and since the suit is filed for partial partition, it is not maintainable.

12. With regard to item-1 of B schedule, they contended that 2nd defendant's husband late Narayana Reddy worked as Excise Sub Inspector; that she purchased a plot of land from Sri Kalva Pratap Reddy, but she did not like to keep it in her husband's name since he was a government servant; she gave all her gold weighing about 50 tulas and some cash which she got from her parents; permission for construction of house in item-1 of B schedule was obtained in the name of late Linga Reddy as he was a trustworthy person; when late Narayana Reddy died in 1967, Linga Reddy executed Ex. B-1 releasing his rights in favour of 2nd defendant narrating the true facts in Ex. B-1. They alleged that 1st defendant not only consented to this but also took active part to transfer it in favor of 2nd defendant. Alternatively they also contended that 2nd defendant has been in possession of item-1 of B schedule openly, adversely and hostile intention from 1968 and even if its time is counted from 01-05-1970, since 12 years have elapsed, she has acquired title thereto and the suit is barred by Article 109 of the Limitation Act. She also claimed that she gifted 600 sq yds of land to 7th defendant in 1978.

WRITTEN STATEMENT OF DEFENDANT NO. 1

13. Ten years thereafter, on 18-01-1994, 1st defendant filed his written statement supporting the plaintiffs. He asserted that plaint A and B schedule properties are ancestral and joint family properties possessed by joint family consisting of himself, his father Linga Reddy and his brother Narayana Reddy; that Linga Reddy was its Manager; and item-1 of B schedule is joint family property. He denied that he was under the influence of other defendants and contended that he was an employee of Kakateeya University and did not take any care with regard to joint family property since he was under impression that his share in the suit properties will not be denied at any point of time. He also pleaded that there were some domestic problems preventing him from taking care of the property as well as education of the children and therefore his father-in-law was taking care about the education of the plaintiffs as their next friend. He pleaded that on account of misunderstandings, 1st and 2nd defendants were in possession of separate extents of lands and continuing their tentative possession. He admitted that 2nd defendant sold away several lands before filing the suit and also after filing the suit. He contended that his mother, the 13th defendant executed Ex. B-5 Will on 22-12-1980 bequeathing her share of the joint family property in his favour and that she died on 15-09-1992. He

therefore pleaded that the plaint schedule property would have to be divided keeping in mind the said Will Ex. B-5 of 13th defendant. He further denied that item-1 of B schedule is the Sthreedhana property of 2nd defendant or prior partition of the joint family properties as alleged by 2nd defendant. He denied that he had set up his sons to file the suit.

THE ISSUES

14. On the basis of the above pleadings, the trial Court framed the following issues:

1. Whether there was a partition between late Linga Reddy 1st defendant and Narayana Reddy (husband of D2) in 1973-74 and since then each party is in exclusive possession of the shares allotted each of them?
2. Whether item No. 1 (house of plaint "B" schedule is the absolute property of D2 and was purchased from out of her sthreedhana properties?
3. Whether plaintiffs are entitled to 7/24th share in plaint schedule properties?
4. Whether the suit is in substance is only for partial partition? If so is the suit for partial partition not maintainable?
5. Whether D-2 is in possession of item No. 1 of plaint "B" schedule house openly and adversely to the rights of others and perfected her title by adverse possession?
6. Whether the suit is barred by limitation?
7. Whether the partition is to the benefit of minor plaintiff?
8. To what relief is the plaintiff entitled to?

15. Before the trial Court, plaintiffs examined P.Ws. 1 and 2 and marked Exs. A-1 to A-9. Defendants examined D.Ws. 1 to 5 and marked Exs. B-1 to B-19.

THE JUDGMENT OF THE TRIAL COURT

16. By judgment and decree dt. 28-08-1997, the trial Court dismissed the suit. It held that burden is on 2nd defendant to establish that there was a prior partition and that 2nd defendant was able to establish such prior partition through the evidence of D.Ws. 1 to 3 and the admission of 1st defendant that the parties were living separately and separate declarations were filed under the Ceiling Act before the competent authority. It noted that Ex. B-2 declaration had been filed by 1st defendant under the Act wherein he had shown that an extent of Ac. 89.37 1/2 gts was his land and the same was accepted by the Verifying Officer under Ex. B-3 verification report. Although 1st defendant denied the signatures on Exs. B-2 and B-7, the Court held that the said denial was not bona fide as he had himself stated in his evidence that to save 8th defendant from the clutches of the Ceiling Act, he was made to file a declaration under the said Act declaring the lands of 8th defendant to be in his ownership and possession and as D.W. 3, he admitted in cross examination

that the lands in Jammikunta were recorded in his name in the pahanies. In view of the non-denial by 1st defendant of the factum of his filing a separate declaration under the Ceiling Act, the Court below held that he did file such a declaration. It disbelieved the plea of 1st defendant that the properties shown in the above declaration belonged to 8th defendant since 8th defendant was not examined to establish the said fact. It held that filing of separate declarations under the Ceiling Act goes to show that the parties were having separate possession and ownership of the lands and such possession was on account of partition being affected between defendant Nos. 1 and 2 and late Linga Reddy. It held that merely because details of the properties allotted to defendant Nos. 2 to 4 were not mentioned, it cannot be said that such partition is not established. It noticed that there was admitted separate possession and separate maintenance of properties and payment of taxes apart from filing of separate declarations under the Ceiling Act and held that this proved the prior partition.

17. Coming to item-1 of B schedule, it held that the said item was the property of 2nd defendant and was not joint family property. It held that the burden was on the plaintiffs to establish that this item is the joint family property but the evidence placed by them did not support the said plea. It held that the statement in Ex. B-1 to the effect that the said property was purchased with the sthreedhana of 2nd defendant is admissible under Section 32 of the Evidence Act, 1872 since late Linga Reddy died and this disproves the plea that it was purchased with the help of joint family funds. It noticed that both D.Ws. 1 and 2 had stated that the father of D-2 was having much extent of land and since the husband of 2nd defendant was also employed as an Excise Sub Inspector, the plea of 2nd defendant that she was given sufficient amount of gold and cash at the time subsequent of her marriage, cannot be disbelieved. It therefore accepted the evidence of D.Ws. 1 and 2 that the gold and other sthreedhana property of 2nd defendant were utilized for acquiring the site under Ex. A-1 sale deed in the name of Linga Reddy. It held that even if Linga Reddy possessed sufficient properties, there was no positive evidence to show that he sold any property at or around the time of construction of item-1 of B schedule house and spent the sale proceeds for such construction. It omitted to mark the statement dt. 04-03-1973 allegedly given by late Linga Reddy before elders.

18. It further held that the suit is barred by limitation since it was not filed within period prescribed under Article 109 of the Limitation Act within 12 years from 01-05-1970 and the suit is filed on 25-01-1983. It also held that P.W. 1 had stated that 1st plaintiff was educated in KITS college, a private institution, that 2nd plaintiff was studying M.B.B.S.; that P.W. 1 maternal grandfather of the plaintiffs had no personal knowledge as to the fee incurred for the education of the plaintiffs; plaintiffs 1 and 2 were studying engineering and medicine which entailed incurring of large expenditure since they were studying in private institutions; and since P.W. 1 could not produce any material to show that he was providing the funds for such education, it has to be held that 1st defendant was taking the plaintiffs education

and this was probable since 1st defendant's wife was living with 1st defendant and 1st defendant did not state that he had any quarrels with his wife. It also took note of the fact that the plaintiffs, having become majors pending suit, did not personally enter into the witness box to prove that their father neglected in getting them educated and that they are getting education with the help of P.W. 1. It held that 1st defendant can give valid discharge as the father of the plaintiffs who were minors in respect of Ex. B-1 also.

19. Challenging the same, this appeal is filed.

20. The appellants had also filed A.S.M.P. No. 2349 of 2010 to receive certified copy of the statement dt. 04-03-1973 given by late Linga Reddy contending that although this document was filed in the trial Court, by oversight, the trial Court did not mark it and since it throws light regarding acquisition of item-1 of B schedule, it should be received as additional evidence.

21. Heard Sri K.V. Bhanu Prasad, learned counsel for the appellants, Sri K. Raja Reddy, learned counsel for 1st respondent, Sri N. Vasudeva Reddy, learned counsel for respondent Nos. 2 and 4 to 6 and Sri J. Venkateswara Reddy, learned counsel for respondent Nos. 15 to 17, Sri O. Manohar Reddy, learned counsel for respondent No. 7.

22. Respondent Nos. 3 and 13 have died. Notice to respondent Nos. 10 to 12 and 14 were dispensed with. Respondent No. 8 also died but her legal representatives i.e. respondent Nos. 18 and 19 have been served. Respondent No. 9 has been unserved.

THE CONTENTIONS OF COUNSEL FOR APPELLANTS

23. The learned counsel for the appellants contended that the judgment and decree in the trial Court are contrary to law and the trial Court had not properly appreciated the evidence on record. He contended that the trial Court should have held that A and B schedule properties are joint family properties and are liable to be partitioned as sought by the appellants/plaintiffs. He pleaded that there was no prior partition in respect of plaint A schedule properties and the trial Court erred in accepting that there was such a prior partition. He contended that 2nd defendant had not filed the declaration given by her before the land ceiling authorities and in the absence of this, the trial Court should have come to the conclusion that the parties had not filed declarations separately under the Ceiling Act. He also contended that item-1 of the B schedule was wrongly held to be the property of the 2nd defendant by the trial Court; that it was also joint family property as it was purchased under Ex. A-1 by late Linga Reddy and construction of the house therein was made also with joint family funds. He contended that late Linga Reddy had mortgaged item-1 of B schedule under Ex. A-2 to the Housing Cooperative Society and if 2nd defendant was the owner, he would not have done so. He also contended that 1st defendant was not protecting the interest of the plaintiffs and was acting as per the dictation of 2nd defendant. He therefore, contended that plaintiffs are entitled to the relief of

partition and separate possession of the plaint schedule properties.

THE CONTENTIONS OF COUNSEL FOR 1st RESPONDENT

24. The learned counsel for 1st respondent-1st defendant supported the contentions of the learned counsel for the appellants-plaintiffs.

THE CONTENTIONS OF COUNSEL FOR RESPONDENT NOS. 2, 4-6, 7 AND 15

25. The learned counsel for respondent Nos. 2, 4 to 6, 7 and 15 to 17 however contended that trial Court had correctly appreciated the evidence on record; that it rightly held that plaint A schedule properties were already divided by late Linga Reddy; that plaintiffs admitted that 1st defendant and 2nd defendant filed separate declarations under the Ceiling Act; that in view of the recital in Ex. B-1 that item-1 of B schedule was purchased with this sthreedhana property of 2nd defendant and house was built with her sthreedhana property, the subsequent statement dt. 04-03-1973 of late Linga Reddy cannot be given any value and should be ignored. They further contended that trial Court had rightly held that the relief of partition in regard to item-1 of B schedule was barred by limitation; and therefore the appeal be dismissed.

26. On the basis of the above contentions, in my opinion, the following points arise for consideration:

a) Whether A.S.M.P. No. 2349 of 2010 is liable to be allowed and the certified copy of the statement dt. 04-03-1973 of Late Linga Reddy be received as additional evidence in the appeal?

b) Whether the trial Court was correct in holding that there was a prior partition of plaint A schedule properties and that the suit for partition in regard to these properties is not maintainable?

c) Whether item-1 of B schedule belongs to the 2nd defendant and was purchased with her sthreedhana property? and whether the said item is liable for partition?

d) Whether item-2 of plaint B schedule is liable for partition?

e) To what relief?

Point (a):-

27. I will first consider whether application A.S.M.P. No. 2349 of 2010 for receiving additional evidence can be allowed or not?

28. The document sought to be received as additional evidence is a statement dt. 04-03-1973 allegedly made by late Linga Reddy during his lifetime. This document was produced by P.W. 2 on receipt of summons from the Court on 21-07-1986. A reference to this document is also made in the evidence of P.W. 2 recorded on 25-06-1996. The trial Court in its judgment at para 24, by oversight, stated that the

said statement has not been filed. Since this statement dt. 04-03-1973 was produced by P.W. 2 in the trial Court and was not marked erroneously by the said Court, I am of the opinion that it can be received in evidence before this Court by way of additional evidence. Therefore, A.S.M.P. No. 2349 of 1990 is allowed, the certified copy of the statement dt. 04-03-1973 is received as additional evidence, and the same shall be marked as Ex. A-10 in the appeal.

Point (b):-

29. Under this point, I now consider whether plaint A schedule property is available for partition.

30. According to the plaintiffs, plaint A schedule property is a joint family property and they are entitled to a share therein. According to defendant Nos. 2 to 5, plaint schedule property was already partitioned previously and therefore there is no question of again partitioning them.

31. In [Bhagwati Prasad Sah and Others Vs. Dulhin Rameshwari Kuer and Another,](#) the Supreme court held:

"The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that because one member of the family separated himself there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other coparceners or that they remained united. The burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief."

32. So the burden is on the defendant Nos. 2-4 to show that there is a prior partition.

33. There is no dispute that separate declarations under the Land Ceiling Act have been filed by late Linga Reddy, 1st defendant and 2nd defendant. This is admitted in para 6 of the plaint by the plaintiffs where they assert that 1st defendant was made to file a separate declaration for the purpose of the Ceiling Act before the Ceiling Tribunal, Karimnagar although they said that he was made to claim the properties of 8th defendant. The plaintiffs also state that late Linga Reddy and 2nd defendant filed separate declarations before the Ceiling Tribunal, Warangal. Defendant Nos. 2 to 6 filed Exs. B-2 and B-3. Ex. B-2 is the declaration filed by 1st defendant on behalf of one Pathi Ramadevi, who is the daughter of 8th defendant. Ex. B-7 is the Order passed by the Land Reforms Tribunal in C.C. No. 230, 231/H2B/75 dt. 19-02-1985 computing the land holding of 8th defendant and her daughter P. Ramadevi.

34. There is no denial by 1st defendant of the allegations made by the plaintiffs about his filing a separate declaration under the Ceiling Act. This is a strong circumstance to prove that partition was made and was acted upon by Late Linga Reddy and defendants 1 and 2.

35. In his evidence, as D.W. 3 that his wife is actually one Ramalakshmi, but he showed 8th defendant as his wife in Ex. B2 declaration filed by him before the Land Ceiling Authority. He filed Ex. B-7 certified copy of declaration filed by him before the land ceiling authority but denied his signature thereon. This cannot be accepted. His evidence clearly shows that he did file his declaration before the land ceiling authorities although he might have wrongly shown the said Ramadevi as his wife therein.

36. The 1st defendant admittedly is an educated person who was working in the Kakateeya University from 1968. Previous thereto, he was working in Hyderabad from 1965-68 in the Agricultural University there as a Demonstrator. He is presumed therefore to be aware of the statements being made by him before the land ceiling authorities and the consequences flowing therefrom. Although in his cross examination, he stated that his father Linga Reddy must have done something in the land ceiling proceedings with a view to save some agricultural properties, he cannot be permitted to blame his father and should accept responsibility for his actions.

37. The 1st defendant has admitted in his evidence that even after learning about declarations filed before the authorities under the Ceiling Act, he had not filed any application stating that fraud was played. He further stated that he had seen the orders of land ceiling authority and the statements given there and that as per Ex. B-3 declaration, he had no land at Nallagunta village of Mulag Taluk now Venkatapur Mandal. These facts prove that separate declarations are filed by defendants 1 and 2 and late Linga Reddy and that 1st defendant had accepted certain properties as his properties in the declaration filed by him. Although 1st defendant sought to contend that the properties shown by him in his declaration belong to 8th defendant, he admitted in his cross examination that in the pahanees of Jellikunta village of Karimnagar in respect of some survey numbers, his name was mentioned. Non examination of 8th defendant in respect of the plea of 1st defendant that he had only shown the properties of 8th defendant in the declaration filed by him renders such a plea and unacceptable. Although he pleaded that this was done with a view to save lands being taken over by the ceiling authorities, such a plea cannot be allowed to be raised.

38. In [Koran Vs. Kamala Shetty](#), a full bench of the Kerala High Court held that decisions of tribunals constituted under the Kerala Land Reforms Act, 1969 would operate as res-judicata and principle of finality or conclusiveness of a prior decision or general principles of res-judicata is applicable even to quasi judicial tribunals like the Land Tribunals functioning under the said Act. Since they are invested with task

of deciding important rights and have to do so on principles of justice and fair play. Therefore the adjudication under the Ceiling Act accepting the separate declarations filed under it and computing the holdings of the defendant Nos. 1 and 2 and Late Linga Reddy would bind the 1st defendant, and the plaintiffs who are claiming through him.

39. DW 3 admitted in his evidence that the cultivation of 2nd defendant and himself is separate; that they were paying land revenue separately, that they were residing separately and they were dealing with the properties and accounts separately. He also stated that 2nd defendant is paying half the amount of land revenue and he is paying other half amount of land revenue tentatively and that himself and 1st defendant were in possession of equal half extents. These admissions also corroborate the factum of prior partition.

40. Although the learned counsel for the appellants sought to contend that the separate enjoyment stated by 2nd defendant is only tentative and not permanent, I am not inclined to accept the said submission. This is because it cannot be a coincidence that 1st and 2nd defendants are in possession of equal half extents and paying revenue therefore equally and separately and enjoying possession separately of the lands. If the division was declared by filing separate declarations before ceiling authorities around 1975 and had continued till 1996 when 1st defendant had given evidence, it cannot be said to be tentative and has to be presumed to be a permanent affair.

41. The 1st defendant had even admitted in his written statement that 2nd defendant had sold away several lands before filing of the suit as well as even after filing the suit. There is no evidence of 1st defendant stopping such sale of properties by the 1st defendant except in respect of the proposed sale to Ramaiah and Chandramouli of Ac. 2.00 gts of land just prior to the filing of the suit.

42. The 1st defendant also admitted that for the marriages of defendant Nos. 3 and 4, his name was not printed as the person inviting guests for the marriage. Defendant Nos. 3 and 4 are sons of 2nd defendant and this also probablises the division in the family because if the family were still joint, since 1st defendant was the senior male member in the family, his name would have been printed as the person inviting guests for their marriages.

43. For the above reasons, I hold that there is a prior partition between Linga Reddy, 1st defendant and 2nd defendant; that such partition was declared before the ceiling authorities; that it was of a permanent nature since both defendant Nos. 1 and 2 were separately enjoying the extents obtained by them, paying land revenue separately and dealing with them separately as admitted by 1st defendant. Since the prior partition is thus established, the suit for partition by the plaintiffs in respect of pliant A schedule property is not maintainable. Point (a) is answered accordingly against the appellants.

Point (c):-

44. Under this point I will deal with item-1 of B schedule. This is a house bearing Municipal No. 2/855/2 with open area of 110 sq yds situated at Naimnagar, Hanumkonda.

45. There is no dispute that late Linga Reddy executed Ex. B-1, a registered release deed on 01-05-1970 in favour of 2nd defendant. The said document recited "whereas the money belonging to the 2nd party (sthreedhana) was spent for the purchase of the plot from one Sri Kalva Pratap Reddy and also for the construction of the said building therein and whereas the first party is only a benmidar at the instance of the second party and whereas the husband of the second party died and the second party desired that her name be recorded in the municipal records as the absolute owner of the said building to avoid future complications, she and her children being the beneficiaries of the said building, the first party is willing to release all his rights and title over the said building in favour of the second party and hence this release deed witnesseth as follows: that in consideration of having spent money by the second party only, the first party being only the name lender hereby affirms and states that he has no interest, title, ownership and possession whatsoever over the said building and the ostensible ownership which vested in the first party hereby releases and the second party hereinafter shall be deemed to be the absolute owner and possessor of the said building; the second party is entitled to file this release deed and get her name entered in the municipal records as the owner of the said building by deleting the name of the first party from the said records; that the second party is also entitled by this release deed to receive the rent from the tenants and pass a receipt thereof for the same." In the said document, the first party referred to is late Linga Reddy and, second party is the 2nd defendant.

46. No doubt late Linga Reddy subsequently is alleged to have made a statement (Ex. A-10) on 04-03-1973 that he was pressurized and prevailed over to execute Ex. B-1 since the 2nd defendant threatened to commit suicide and forced his hand. But 2nd defendant as D.W. 1 denied that she had influenced late Linga Reddy to execute Ex. B-1 release deed. In any event, assuming that he did make the statement Ex. A-10 to the above effect, that itself is not conclusive proof of the alleged coercion exerted by 2nd defendant. The said fact has to be proved by other evidence and a suit should have been filed by Late Linga Reddy to cancel it. The fact remains that he lived up to 1977 but did not take any steps to get Ex. B-1 invalidated on the ground that it was obtained from him by coercion. Therefore Ex. A-10 by itself cannot come to the aid of plaintiffs to plead that Ex. B-1 is an invalid document. Even P.W. 1 claimed that 5 or 6 months after Ex. B-1 was registered he came to know that 2nd defendant pressurized Linga Reddy to execute it since he was told by Linga Reddy of the same. Yet he did not take steps to get it cancelled. Under Article 59 of the Limitation Act, 1963 three years time is granted to seek cancellation of a document which is voidable. Since Linga Reddy was alive till 1977 more than three years after

he gave Ex. A-10 statement, the time which started to run against him from the date of Ex. A-10 continued to run and after the expiry of three years thereafter, Ex. B-1 became unassailable.

47. The admission of late Linga Reddy in Ex. B-1 that the site on which item-1 of B schedule stands was purchased with the sthreedhana of 2nd defendant and the construction was also made with her sthreedhana would be a strong piece of evidence to establish that item-1 of B schedule is not joint family property but the separate property of the 1st defendant. The 2nd defendant pleaded that she purchased it but her husband was a government servant and therefore the sale deed was taken in the name of late Linga Reddy and permission for construction was also obtained in the name of late Linga Reddy. No doubt there is slight discrepancy between her pleading and evidence inasmuch as she stated in her written statement that she purchased the plot, but in chief examination stated that since her sthreedhana was utilized for the marriages of the three daughters of late Linga Reddy, the item-1 of B schedule was transferred in her name. However in cross examination she stated that she raised the money for construction of the house from her sthreedhana, that she was given 50 tulas of gold by her father at the time of her marriage and that her husband sold those gold items. It is possible that there was a lapse in her memory since she was deposing more than 20 years after the execution of Ex. B-1. Therefore this discrepancy cannot be given any weightage. Her brother was examined as D.W. 2 and he also stated that at the time of marriage of 2nd defendant she was given 50 tulas of gold and some cash by his father and her husband sold away the gold and purchased a plot with her money and constructed a house in the name of late Linga Reddy since her husband was a government servant. He is one of the attestors of Ex. B-1 and he spoke of the execution of Ex. B-1 by late Linga Reddy. He categorically stated nothing was paid by Linga Reddy towards sale consideration for that plot. I see no reason to disbelieve the evidence of D.W. 2 which is amply corroborated by the recitals in Ex. B-1.

48. There is no dispute that the 1st defendant kept silent when late Linga Reddy executed Ex. B-1 in favour of 2nd defendant and only in the written statement filed by him on 18-01-1994, 23 years later, for the first time he raised a plea that item-1 of B is joint family property. This conduct of 1st defendant in keeping quiet for 23 years after the execution of Ex. B-1 also supports the view that item-1 of B schedule is the separate property of 2nd defendant and is not joint family property.

49. Moreover the 1st defendant admitted that after the death of his father, the 2nd defendant is collecting the rents. Although he stated that there were certain account books written and maintained by his father pertaining to construction of item-1 of B schedule in his possession, he admitted that there were no entries therein regarding purchase of plot and construction of house. He admitted that the house in item-1 of B schedule was constructed in 1961 and the accounts filed by him relate to 1974 and do not refer to the construction expenditure of 1961. Therefore, it is

clear that the 1st defendant, who is supporting the plaintiffs, failed to prove that joint family income was utilized to purchase item-1 of B schedule.

50. For all these reasons, I hold that item-1 of B schedule belongs to the 2nd defendant and was purchased with her sthreedhana property and it is not liable for partition. Point (c) is answered against the appellants.

Point (d):-

51. Coming to item-2 of B schedule, it is only a thatched hut together with vacant land measuring 2.500 sq yds at Nallagunta village in Mulug Taluk. There was hardly any argument addressed by the counsel for the appellants in respect of this item probably because its market value was put as Rs. 2,000/- even by the plaintiffs. The 2nd defendant pleaded in her written statement that this item was also partitioned in 1978 or 1979 and the back portion thereof fell to her share. She stated that the land appurtenant to the said house was also partitioned and she got 10 guntas of land. The 1st defendant in his written statement filed long after the 2nd defendant filed her written statement did not deny this averment. He stated in his evidence that it is not in his possession and it is in a dilapidated condition. In view of non-traverse by 1st defendant of the pleading of 2nd defendant, I hold that this item had already been divided in 1978 or 1979 and is not available for partition.

Point (e):-

52. The plaintiffs are admittedly highly educated. D.W. 3, their father admitted that 1st plaintiff passed B. Tech and was working as software engineer in Madras and he had passed B. Tech from KITS, a private educational institution; that 2nd plaintiff was in third year M.B.B.S. and was studying in Kakateeya Medical College; and 3rd plaintiff was in first year of engineering in REC, Warangal. D.W. 3 stated that except subscribing his signature on the admission forms in his capacity as natural father, he did not have any connection with the plaintiffs. This is unbelievable. His wife, who is not disputed to be living with him, has not been examined in support of this plea. P.W. 1, his father in law, who claimed to have taken care of the plaintiffs admitted that donation was paid for the study of the 1st plaintiff in KITS college, Warangal but claimed that he did not remember how much donation was paid for education of 1st plaintiff. He also stated that he cannot say how much fee was being paid for 3rd plaintiff or for education of 2nd plaintiff. P.W. 1 could not produce any material to show that he was providing the funds for such education. So it has to be held that 1st defendant was taking the plaintiffs education. These facts suggest that it is the 1st defendant who is really the brain behind the litigation and having ensured that his family, consisting of himself and his three sons prospered, he set up his sons to file this suit through his father in law P.W. 1 with a view to harass the 2nd defendant who had become widowed in 1967 itself and had to struggle to bring up two sons and three daughters and also attend to the marriages of the daughters. In my opinion the filing of this appeal by the appellants is not bona fide. Therefore, I

dismiss the appeal with costs.

53. As a sequel to the dismissal of the appeal, all the miscellaneous petitions are also dismissed.