

APHC010602912009



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3365]

THURSDAY ,THE SEVENTEENTH DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

APPEAL SUIT NO: 694/2009

Between:

Anjuru Sujatha and Others

...APPELLANT(S)

AND

Anjuru Venkata Subbamma and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.K S GOPALA KRISHNAN

Counsel for the Respondent(S):

1.PRABHU NATH VASIREDDY

2.

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR
APPEAL SUIT No. 694 of 2009

JUDGMENT:

1. Plaintiffs before the trial court are the appellants in this appeal filed under section 96 read with order 41 Rule 1 CPC. Three items of immovable property were the subject matter in O.S.194 of 2001 on the file of learned Principal Senior Civil Judge, Nellore. Claiming that the plaint schedule properties were joint family properties, the suit was filed praying for partition and the prayer in the suit reads as below.

“The plaintiff therefore pray for a decree and Judgment in their favour: -

(a) directing the defendants to partition the 1/4th share of the plaintiffs in the plaint schedule properties and put them in separate possession thereof by passing preliminary decree thereof;

(b) passing final decree in pursuance of the preliminary decree, in case of non-compliance by the defendants 1 to 5 herein, through process of the court;

(c) granting costs of this suit; and

d) passing such other and further reliefs that are deemed just and proper under the circumstances of the case;”

2. There were three defendants in the suit. D1 filed a written statement wherein she agreed for the claim in the suit and prayed for the decree. D3 In the suit did not choose to appear and

contest and the suit proceeded *ex-parte* against him. D2 contested the suit wherein he essentially pleaded that item No.1 of the plaint schedule was his self-acquired property and was not liable for partition. He did not deny the claim for partition of plaintiffs as against item Nos. 2 and 3 of the plaint schedule.

3. Learned trial court framed the following issues for trial.
 1. Whether the plaintiffs are entitled for partition of the plaint schedule properties?
 2. Whether the business, relating to M/s Sri Vijayalakshmi Engineering Works, is exclusive and absolute concern of the second defendant?
 3. Whether Sudhakar was a partner of M/s Sri Vijayalakshmi Engineering Works, whose claims have not been settled, by other partners?
 4. Whether the suit, as framed, is maintainable?
 5. To what relief?

There was evidence of PWs.1 to 4 and Exs.A1 to A19 and the evidence of D2 as DW.1 and Exs.B1 to B31. After considering the entire material on record and the arguments advanced on both sides, the trial court held that item Nos.2 and 3 of the plaint schedule are joint family properties. It held that item No.1 of the plaint schedule was not joint family property and it was self-acquired property of D2/ Sri A. Naga Raju. It recorded a finding

that M/s. Vijayalakshmi Engineering Works situated in Industrial Area is a business concern exclusively and absolutely belonged to D2/Sri A. Naga Raju and that the business concern is the proprietary concern owned by D2. Considering Ex.A5/ partnership deed, the trial court recorded its finding to the effect that M/s Vijayalakshmi Engineering Works is not a partnership firm and therefore, the suit for partition against it could not be maintained. About the maintainability of the suit, it held that the suit as framed was not maintainable since M/s Vijayalakshmi Engineering Works was not made a party. It decreed the suit in the following terms.

“In the result the suit is partly decreed. Items No.2 and 3 of the plaint schedule property are directed to be partitioned into four equal shares and one such share be allotted to the plaintiffs and the plaintiffs be put in possession thereof. The suit in relation to Item No.1 of the plaint schedule properties stands dismissed. However, that there be no order as to costs. Accordingly a preliminary decree is passed.”

4. Plaintiffs in the suit are aggrieved against the findings of the trial court with reference to item No.1 of the plaint schedule and preferred this appeal. The grounds urged in the memorandum of grounds of appeal and the very argument of Sri K.S. Gopala Krishnan, learned senior counsel appearing for appellants are that the trial court erroneously dismissed the claim for partition of item No.1 of the plaint schedule as it failed to recognize the

contents of Ex.A5 partnership deed, Ex.A6 relinquishment deed and the admissions of D2 in Ex.A12 and the contents of Ex.A14 and the evidence of DW.1/D2/Sri A.Naga Raju. Trial court failed to draw a distinction between ordinary partnership firm and joint Hindu family firm.

5. As against it, Sri Prabhu Nath Vasireddy, the learned counsel for respondent No.2/D2 contended that the suit as framed is misconceived and by the very versions of the plaintiffs in the plaint, the suit should have been held not maintainable by the court below and that in the suit for partition of alleged joint family properties, all the sharers are not made parties. Learned counsel urges that there are no merits in this appeal and prays for dismissal.

6. The following points fall for consideration in this appeal.

1. **What is the legal character of item No.1 of the plaint schedule property?**
2. **Whether the frame of suit is incorrect, and the suit is not maintainable?**
3. **Whether the judgment of the trial court warrants any interference?**

POINT Nos.1,2 and 3: -

7. The vociferous contest between the parties is with reference to item No.1 of the plaint schedule property. The description of this item No.1 as contained in the plaint schedule reads as below.

“Nellore Registration District - Nellore Sub Registration Nellore Municipal Limits - Nellore Bit-1, Dargamitte - Asst No.24062 Industrial area, Survey No.2029/3, Sri Vijayalakshmi Engineering Works, site in an extent of 264 3/4 ankanams out of which 25 ankanams of ACC shed and an extent of 20 ankanams RCC (GF and FF) plot No. B-14 L.P.No.461/84 bounded by:-

East: Plot No. 5-15 and Plot B 11

South: 40 ft. Wide road

West: open space

North: Plot No. A2, A1.

within these boundaries the above said site and ACC shed and RCC building with all easement any rights thereon.

Market Value of this item is Rs.26,43,960/-“

8. A few facts concerning family are required to be noticed here.

Sri A.Brahmaiah and Smt. Venkata Subbamma are Hindu spouses. Sri Brahmaiah died in the year 1980. Smt.Venkata Subbamma is D1 in the suit and is R1 in this appeal and pending appeal she died. During their wed lock, as per the plaint, they were blessed with three sons, namely, Sri A.Sudhakar who died on 13.04.1992 which was much prior to the institution of the suit

and he was survived by his wife and two children. His wife and two children are the plaintiffs and they are the appellants herein. The other sons of Sri Brahmaiah and Venkata Subbamma are Sri A.Naga Raju who is D2/ R2 and Sri A.Subramanyan who is D3/R3. It is undisputed that there is registered relinquishment deed dated 21.05.1992/Ex.A6 executed in favour of Sri A. Subrahmanyam/ D3/R3. That was executed by D1/A. Venkata Subbamma and D2/A. Naga Raju and 1st plaintiff/ Smt. A. Sujatha. The recitals in it are to the affect that the joint family owned immovable property mentioned in the relinquishment deed and Sri A.Subrahmanyam who is one of the joint family members and the other members were unable to co-exist and therefore, the executants had relinquished their share in favour of Sri A. Subrahmanyam and received Rs.90,000/- and thereby conferred the entire rights over that property in favour of Sri A.Subrahmanyam. All these facts are not in dispute. The plaint did not disclose about any other children for Sri Brahmaiah and Smt. Venkata Subbamma. However, the 1st plaintiff deposing as PW.1 admitted in her cross-examination that the above Hindu couple referred above had four daughters. D2 deposing as DW.1 also asserted these facts about four of his sisters. The averments

in the plaint and the evidence of PW.1 and the admissions of D2 as DW.1 are that the joint family properties were not subjected to partition earlier. It is undisputed that the four daughters of the Hindu spouses are not made parties. As one would notice that the entire case set up in the plaint would only speak about the properties owned by Sri Brahmaiah and his wife Smt. Venkata Subbamma and further about joint exertion of the family members. When the pleaded case of the plaintiffs is about joint family and joint family properties and partition of those joint family properties, it goes without saying that all the sharers own their respective shares in such joint family properties. When partition is prayed for, the suit must implead all the sharers. There is no registered partition deed executed earlier to Hindu Succession Amendment Act, 2005 and there is no court decree earlier granting any partition. In such circumstances, the marital status of those female children is of no consequence. Those female children of the Hindu spouses are certainly the sharers in these properties. It is not pleaded in the plaint nor is it deposed by PW.1 that the shares of the daughters of Sri Brahmaiah were already settled. A suit for partition without impleading all the sharers is not maintainable vide

- ***Kanakarathnammal Vs Loganatha Mudaliar*¹;**
- ***K.Bhaskar Rao Vs K.A. Rama Rao*²;**
- ***Avula Jayarami Reddy Vs Yerrabothula Nagarathnamma*³;**
- ***Bodduboina Raja Gopal Vs Bodduboina Venkata Narayana*⁴.**

Therefore, the claim of the appellants/plaintiffs that item No.1 of the plaint schedule is joint family property and that it is to be partitioned among the sharers who are the parties to the suit alone is devoid of merits as it failed to implead all the legal sharers of this joint Hindu family property. Irrespective of other merits of the case argued for appellants, the appeal shall fail concerning item No.1 of the plaint schedule property.

9. The pleadings and evidence on both sides is clear that D2/R2/Sri A.Nagaraju is the only one who was relatively well educated and that he obtained a Diploma in Mechanical Engineering. He was born on 01.06.1950. He got married on 11.03.1978. The evidence of DW.1/D2 and Ex.B series

¹ AIR 1965 SC 271

² 2010 (6) ALT 109 (AP)

³ 2012 (1) ALT 356 (AP)

⁴ 2022:APHC:36833

documents exhibited by him is to the effect that he made an application to APIIC to allot him a site to run an industry. Accordingly, plot No.B14 /item No.1 of the plaint schedule was allotted and it was to be purchased by him on payment of sale consideration. He had to pay 1/3rd cost of the plot and the remaining margin money was sanctioned by Deputy Development Officer, Department of Industries. He established M/s Sri Vijaya Lakshmi Engineering Works. He obtained registered certificate from Assistant Director of Industries and Exports Promotion, Nellore on 10.08.1976 and the registered sale deed was executed in his favour in the year 1996. He has been filing Income Tax returns in the name of above business concern. All these documents disclose that M/s Vijaya Lakshmi Engineering Works is a proprietary concern and D2/R2/A.Naga Raju is its proprietor. The Income Tax returns are filed for it as proprietary concern. Considering all this evidence, the trial court held that item No.1 of the plaint schedule is a self-acquired property of D2/R2.

10. That finding is assailed in this appeal and the meticulous arguments advanced on behalf of the appellants referred to various facts available in the evidence. Earlier SBI filed

O.S.No.76 of 1990 before the learned Subordinate Judge, Nellore showing M/s.Sri Vijaya Lakshmi Engineering Works as D1 and the parties to the present suit and appeal as other defendants. Written statements were filed wherein it was admitted that Sri Vijaya Lakshmi Engineering Works was a partnership firm.

11. The further contention is that D2/R2/ Sri A.Nagaraju filed Ex.B30 caveat petition wherein caveat petitioner is M/s Vijayalakshmi Engineering Works and he styled himself as Managing Partner of the said partnership firm.

12. On the top of all of these, there is Ex.A5 partnership deed dated 26.10.1980. A perusal of it shows that it was executed by Smt. A.Venkata Subbamma and her three sons. It refers to Sri A. Nagaraju/D2/R2 and his registration with the Assistant Director of Industries and Commerce under self-employment scheme and obtaining necessary permission and properties and that the partnership deed is entered into for financial and other assistance to be taken by D2 from the other partners who are his family members. It is recited there that the partnership would run under the name and style of M/s Sri Vijaya Lakshmi Engineering Works. Its head office is Industrial Area which could be changed with the consent of all the partners. It is specifically mentioned that it is a

partnership at will. It is also mentioned that the partnership is governed by the Indian Partnership Act, 1932. The shares among partners for profit and loss are as mentioned below:

- a) A.Nagaraju - 0-30
- b) A.Venkatasubamma - 0-25
- c) A.Sudhakar - 0-25
- d) A.Subrahmanyam - 0-20

13. The contention raised on behalf of the appellants is that Sri Brahmaiah earlier being a Blacksmith ran a workshop and he and other family members worked together and D2/Nagaraju being the only educated person, he was to use his skill and other members of the family contributed their might and Sri Brahmaiah and Smt. Venkata Subbamma sold out their properties and invested that money in this business and Sri Brahmaiah even borrowed debts for the purpose of investment in this business. D2 as DW.1 admitted such investments from his late father.

14. Based on the above pieces of evidence, the ground urged in this appeal is that item No.1 of the plaint schedule is joint family property and therefore it has to be partitioned and the observations of the trial court are incorrect.

15. In the context of the above submissions, the following principles are to be noticed.

Joint Hindu Family (JHF) business is a firm of business organization based on Hindu law where family members jointly own and manage business, sharing profits and liabilities. A partnership firm, on the other hand, is found through an agreement between two or more individuals who agree to share profits and losses. Key differences between these two entities lie in their formation, legal basis, membership, and management. Any joint Hindu family business membership is determined by birth and inheritance with no maximum limit, whereas in a partnership firm membership is limited to 10 for banking and to 20 for other businesses and requires consent of all partners to admit new members. In joint family business, the Kartha generally has unlimited liability, while other members' liability is limited to their share of the family property. As against that in a partnership firm partners generally have unlimited liability for the firm's debts.

16. The terms "joint family interest" and "joint interest" are related but have distinct legal implications particularly under Hindu law. 'Joint family interest' refers to the rights and responsibilities of individuals within a Hindu joint family including

rights to maintenance, property, and potential claims upon partition. 'Joint interest', on the other hand, is a broader subject encompassing shared ownership or rights in a property, asset, or responsibility, not necessarily limited to family relationships. Joint family interest is rooted in Hindu law. Whereas joint interest depends on the context and usually it is based on contracts.

17. When a joint Hindu family owns a partnership firm, typically the Kartha/ Managing member of the family represents family in the partnership and other family members' liability is limited to their share in the joint family property. The family members, as a unit, are normally not considered as partners in the partnership firm.

18. In the context of the above undisputed legal formulations, the facts on hand are to be assessed.

M/s Sri Vijaya Lakshmi Engineering Works, according to appellants/plaintiffs is a partnership firm and Ex.A5 partnership deed is the proof for it. It bears the signatures of all those members who are referred as partners in the partnership deed which includes the hard contesting D2/R2/ Sri A.Naga Raju. Though genuineness of Ex.A5 was questioned by D2 during the trial, the evidence on record amply demonstrates that such

document was executed with free will and volition of all those people who subscribed their signatures to that document. Therefore, there is no reason to discard Ex.A5 partnership deed and the trial court certainly went wrong in not giving due attention to it.

19. Item No.1 of the plaint schedule property is referable to Ex.A5 partnership deed. Whether this partnership firm is a running concern or not is one aspect of the matter. In Ex.A5 partnership deed, it is specifically referred that it is a partnership at will.

20. "Partnership at will" is a type of partnership where there is no agreed upon duration or specific conditions for its determination. In such instances, there are no pre - determined needs or circumstances that automatically lead to the dissolution of the partnership firm.

21. The pleaded case of the plaintiffs and the categorical evidence of PW.1 is that one of the partners is Sri A.Sudhakar. He died in the year 1992. Thus, while Ex.A5 partnership deed was executed in the year 1980, one of the partners died in the year 1992. Ex.A5 does not refer to dissolution of the partnership firm on the death of any of the partners. The specific pleaded

case of the plaintiffs and the evidence of PW.1 is that even after the death of said partner, the partnership firm has been in existence and the business has been going on. Thus, the partnership firm is alive and in currency. If this position is considered as an established fact, then the question that arises for consideration is whether legal heirs of a deceased partner could seek partition of a live partnership firm. I must say that a partition of a live partnership firm is not known to law. In ***Addanki Narayanappa Vs Bhaskara Krishtappa***⁵, the Hon'ble Supreme Court of India dealt with sections 14, 15, 29, 32, 37, 38 and 48 of the Partnership Act, 1932 and held that during the subsistence of the partnership, no partner can deal with any portion of the property as his own nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fell to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities that are set out in section 48 of the Partnership Act.

⁵ AIR 1966 SC 1300

22. In ***Malabar Fisheries Company Vs Income Tax Commissioner, Kerala***⁶, the Hon'ble Supreme Court of India after considering various aspects including section 34(3)(b) of the Income Tax Act held "now every dissolution must in point of time be anterior to the actual distribution, division or allotment of the assets that takes place after making accounts and discharging debts and liabilities due by the firm. Upon dissolution, the firm ceases to exist; then follows the making up of accounts, then the discharge of debts and liabilities and thereupon distribution, division or allotment of assets takes place inter se between the erstwhile partners by way of mutual adjustment of rights between them. The distribution, division or allotment of assets to the erstwhile partners, is not done by the dissolved firm.

23. In ***Sudarsanam Maistri Vs Narasimhulu Maistri***⁷, it is stated that the suit for partition of partnership assets does not lie and the remedy of the plaintiff is only to file a suit for dissolution of partnership firm and for accounts. The said proposition was also referred to by this court in ***B.Janardhan Gupta Vs B. Padmanabha Gupta***⁸.

⁶ AIR 1980 SC 176

⁷ ILR 25 Madras 149

⁸ 1993 SCC Online AP 18

24. The pleadings and evidence of plaintiffs is that the partnership firm is not dissolved and that no legal process for dissolution of partnership firm took place and that the partnership firm is a going concern. Plaint and evidence of PW.1 is completely silent on the existing liabilities of this partnership firm. When considered in the light of the above principles, it emerges very clearly that the suit for partition of a subsisting partnership firm is not maintainable. Therefore, the conclusions arrived at by the trial court in dismissing the suit for partition concerning item No.1 of the plaint schedule property is upheld though not for the reasons afforded by the trial court but because of the principles adverted to by this court in the earlier paragraphs. In that view of the matter, this appeal of the plaintiffs concerning item No.1 of the plaint schedule shall fail.

25. Item No.1 of the plaint schedule stands in the name of D2. It has always been assessed with the income tax authorities as a proprietary concern. The evidence on record clearly discloses that there has been no effort on part of the so called joint family members to have the firm assessed as joint Hindu family business firm. Simply, because the father of D2 sold certain

assets and gave some money for investment into this business does not make this a joint family concern. Even the plaintiffs who are widow and children of one of the deceased partners never claimed that they are now partners of this firm. All this clearly indicate that it is not a joint family firm.

26. Item No.1 of the plaint schedule is an immovable property and that stood registered in the name of D2. After property was allotted to D2/R2/A.Naga Raju, various financial inputs were required to build sheds and project equipment and employ people to run the business. All that required money also. Ex.A5 partnership deed was executed among partners with specific recital that the partnership is brought into existence for financial and other assistance to be taken by D2/R2 from the other partners mentioned in the deed. On this, the contention of the learned counsel for respondent No.2/D2/ Nagaraju is that item No.1 of the plaint schedule property which is an immovable property has still been continuing as the individual property of D2/R2 and it has never become the property of partnership firm. On facts and law, this is disputed by the learned counsel for appellants who contended that Ex.A5 partnership deed itself refers to D2/R2 and about his name being registered with the

Assistant Director of Industries and Commerce under self-employment scheme and the deed further refers to doing business in manufacture and sale of Agriculture Implements, Tractor Trailers, to undertake other fabrication works, D2 and other partners brought into existence Ex.A5 partnership deed. In this regard, learned senior counsel for appellants cited ***Purushottam Vs Shivaraj Fine Arts Litho Works***⁹. By a reference to the precedent, their Lordships reiterated the principles as mentioned here. “The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trade asset of the partnership firm in which all the partners would have interest in proportion to their share for the joint venture of the business of the partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in much less over any other partnership property. He would be able to exercise this right even to the extent of his share in the business of the

⁹ (2007) 15 SCC 58

partnership. As already stated his right during the subsistence of the partnership is to get his share of profit from time to time as may be agreed upon among the partners and after dissolution of the partnership or with the retirement from the partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after deduction of liabilities and prior charges". To the same effect, learned senior counsel for appellants also cited **S.V.Chandra Pandian Vs S.V.Sivalinga Nadar**¹⁰.

27. In this context, this court may also refer to **Sachin Jaiswal Vs M/s. Hotel Alka Raje**¹¹. Their Lordships of the Hon'ble Supreme Court of India after giving imprimatur to a ruling of a full Bench of the Madras High Court stated that no formal document or agreement would be necessary to enable a partner to bring his immovable property into the partnership firm.

28. The facts on record are crystal clear that it is on item No.1 of the plaint schedule that the whole business of the firm has been done and it is with reference to that business only Ex.A5 partnership deed was executed. Therefore, in the eyes of law, this property is that of the partnership firm and D2/R2 can no

¹⁰ (1993) 1 SCC 589

¹¹ 2025 LiveLaw (SC) 342

more claim that to be his exclusive property. The contrary finding rendered by the court below cannot be supported as it committed grave error in appreciation of facts and not taking appropriate legal view.

29. As item No.1 of the plaint schedule is now considered as property of the partnership firm, as the partnership firm is a subsisting firm and since the present litigation is not one for dissolution of the partnership firm, the prayer of the appellants/plaintiffs for division of this partnership firm is misconceived and therefore, the observations of the trial court that frame of the suit is incorrect has to be upheld though for not the reasons mentioned by the trial court but in view of the reasons mentioned by this court.

30. Referring to the principles of joint Hindu family, learned counsel cited ***D.S.Lakshmaiah Vs Balasubrahmanyam***¹² and ***V.D.Dhanwatey Vs Commissioner of Income Tax***¹³.

On the above facts of this case, this court is of the clear view that mere lending some money for investment does not make item No.1 of the plaint schedule as joint family property.

¹² (2003) 10 SCC 310

¹³ AIR 1968 SC 683

Therefore, on facts the above rulings have no application. Hence, all the points are answered against the appellants.

31. In the result, this appeal is dismissed with costs. Consequently, judgment dated 25.09.2006 in O.S.No.194 of 2001 on the file of learned Principal Senior Civil Judge, Nellore is confirmed.

As a sequel, miscellaneous applications, pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 17.04.2025

Dvs

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

APPEAL SUIT No. 694 of 2009

Date: 17.04.2025

Dvs