



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

[3524]

THURSDAY, THE TWENTY SECOND DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

APPEAL SUIT NO: 512/2019

Between:

1. GORIPARTHI JHANSI, W/O G. NAGESWARA RAO AGED ABOUT 52 YEARS, OCC. HOUSEHOLD R/O H. NO. 6-3-354/14, FLAT NO. 501, HINDINAGAR COLONY, DWARAKAPURI, PANJAGUTTA, HYDERABAD
2. MS. GRIPARTHI RISHITHA, , D/O G. NAGESWARA RAO AGED 28 YEARS, EMPLOYEE, R/O H. NO. 6-3-354/14, FLAT NO. 501, HINDINAGAR COLONY, DWARAKAPURI, PANJAGUTTA, HYDERABAD
3. GORIPARTHI RITHWIK, , S/O G. NAGESWARA RAO AGED ABOUT 22 YEARS, STUDENT, R/O H. NO. 6-3-354/14, FLAT NO. 501, HINDINAGAR COLONY, DWARAKAPURI, PANJAGUTTA, HYDERABAD

...APPELLANT(S)

AND

1. GORIPARTHI SRIRAM MURTHY, S/O G. VENKANNA AGED ABOUT 68 YEARS, OCC. RETIRED EMPLOYEE R/O PLOT NO. 52, FLAT NO. 204, RISHI RESIDENCY PHASE-III, KALYANNAGAR, HYDERABAD.
2. GORIPARTHI SURYA RAO, S/O G. VENKANNA AGED ABOUT 52 YEARS, OCC. RETIRED EMPLOYEE R/O KONETIMITA, MULAPET, WARD NO. 19, POTTI SRIRAMULU NELLORE DISTRICT. A.P.

...RESPONDENT(S):

to allow this First Appeal and set aside the Judgment and decree passed by the Hon'ble III Additional District Judge, West Godavari District, Bheemavaram dt.11.06.2019 passed in O.S.No. 12 of 2013 and decree the suit as prayed for and pass

Counsel for the Appellant(S):

1.CH SIVA REDDY

Counsel for the Respondent(S):

1.S S R MURTHY

The Court made the following:

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM
APPEAL SUIT No.512 of 2019

JUDGMENT: *(per Hon'ble Sri Justice Maheswara Rao Kuncheam)*

Heard the arguments of Sri Ch. Siva Reddy, learned counsel for the appellants/plaintiffs and Sri A. Rajendra Babu, learned counsel assisted by Sri S.S.R. Murthy, learned counsel for the respondent/defendant No.1. Perused the material available on record.

2. This appeal under Section 96 of the Code of Civil Procedure (in short 'CPC') has been filed by the appellants/plaintiffs in O.S. No.12 of 2013 in the Court of III Additional District Judge, Bhimavaram, challenging the dismissal of the said suit, vide judgment and decree dated 11.06.2019.
3. The parties hereinafter referred to as per their nomenclature before the Trial Court for the sake of brevity.
4. Plaintiff No.1 and plaintiff Nos.2 and 3 are wife and children of the deceased Goriparthi Nageswara Rao in O.S. No.12 of 2013. Defendant No.1 is the elder brother and defendant No.2 is the younger brother of deceased Goriparthi Nageswara Rao, and all of them were born to late Sri Goriparthi Venkanna and late Smt. Goriparthi Venkamma.

5. O.S. No.12 of 2013 was filed by the plaintiffs seeking for declaration and partition and to declare the partition deed, and settlement deed dated 27.06.2008 in respect of suit 'A' Schedule property and registered sale deed 25.04.2015 in respect of suit 'B' Schedule property as sham, collusive and fraudulent and non-binding on the plaintiffs. Also, with a further prayer for the partition of the suit schedule properties into three equal shares, and the subsequent allotment 1/27th of share to the 1st plaintiff, 1/9th share to the 2nd plaintiff and 1/27th to the 3rd plaintiff.

Brief case of the plaintiffs/appellants:

6. According to the plaintiffs, suit schedule properties belongs to the common ancestor of both the plaintiffs and defendants, namely Goriparthi Venkanna S/o Ramanaiah, who married Venkamma. Out of their wedlock, they were blessed with three sons namely, 1.G.Srirammurthy, 2.G.Nageswara Rao, 3. G.Surya Rao. Plaintiffs are legal heirs i.e., wife and children of deceased G.Nageswara Rao, who passed away on 01.02.2011. Thus, the plaintiff filed suit for partition, arraying the two brothers of the deceased G.Nageswara Rao as defendants 1 and 2 for partition and also for delivery of separate possession. Plaintiff in the year 2018, through an amendment order dated 16.08.2018 *vide* I.A.

No.620/2018, in the main plaint added the additional pleadings and also sought for declaration that registered settlement deeds dated 27.06.2008 & 25.04.2015 and registered partition deed dated 27.06.2008 as fraudulent, collusive, sham and nominal and nonest in the eye of law and not binding on the deceased G.Nageswara Rao and plaintiffs and that they are entitled for partition over the “suit schedule properties”.

7. It is the further case of the plaintiffs that their common ancestor G.Venkanna, purchased suit ‘A’ schedule property through registered sale deed dated 25.06.1960. The said common ancestor also built a house in an extent of 500 square yards in Peddaamiram village, Kalla Mandal, West Godavari District, which is suit ‘B’ schedule property. After the death of said G.Venkanna suit ‘A’ schedule property was mutated in the name of his wife G.Venkamma, who died intestate. Thus, the defendants 1 & 2 and late G.Nageshwara Rao, who is the husband of the 1st plaintiff and father of plaintiff Nos.2 & 3, became joint owners of the suit schedule properties. In fact, 1st defendant used to manage the suit schedule properties, but there is no division of suit schedule properties among the brothers.

8. In spite of the requests made by the 1st plaintiff, partition never took place in respect of the suit schedule properties among the plaintiffs and

defendants. The plaintiffs asserted that the registered settlement deed dated 27.06.2008, registered partition deed dated 27.06.2008 and the registered sale deed dated 25.04.2015 are sham, nominal, collusive and the said documents are not binding either on the husband of the 1st plaintiff or on the plaintiffs. Thus, the plaintiffs set out their case for partition.

Brief case of the defendants:

9. Apparently, the 1st defendant filed his detailed written statement specifically and categorically denying the averments made in the plaint. However, the defendant had not disputed the relationship with the plaintiffs as stated in the plaint.

10. The 1st defendant *inter alia*, stated that the common ancestor G.Venkanna, purchased an extent of land Ac.1.09 cents out of Ac.1.15 cents of suit 'A' schedule property from K.Subbamma and others through registered sale deed dated 19.08.1980. The late G. Venkanna along with his brothers, also purchased an extent of land Ac.0.16 cents in Pedamiram Village from one K.Pedda Venkat Reddy and others through registered sale deed dated 06.04.1942. Later, G.Venkanna and his brothers orally partitioned the said purchased site, and out of the said partition, he was allotted 395.97 Sq. yards or Ac.0.08 1/8 cents of the total site, an extent of

Ac.16.36 cents, wherein, he constructed the building i.e., suit 'B' schedule property.

11. It is further stated that the said G.Venkanna died intestate in the year 1993 and thereafter his wife, Smt. K.Venkamma also died intestate in the year 2000. After the death of the parents of the defendants and G.Nageshwara Rao, suit 'A' and 'B' suit schedule properties and the cash accumulated in joint family property, devolved upon the defendants and G.Nageshwara Rao and they used to enjoy the suit schedule properties jointly.

12. It is stated that both the defendants along with the 1st plaintiff's husband, G.Nageswara Rao partitioned suit 'A' Schedule Property and the joint family cash of Rs.1,00,000/- among them. To that effect, they have also executed registered partition deed dated 27.06.2008. Through the said partition deed, the 1st defendant got Ac.0.78 2/3 cents of land and out of the "Suit A" Schedule Property, and the remaining Ac.0.36 ½ cents was allotted to the 2nd defendant. The joint family cash of Rs.1,00,000/- was allotted and given to the share of the 1st plaintiff's husband, namely G. Nageswara Rao, through registered partition Deed dated 27.06.2008. The said Partition Deed was acted upon and from then onwards, the 1st defendant started to

enjoy his allotted share Ac.0-78 2/3 cents of land. Similarly, the 2nd defendant started to enjoy his allotted share of Ac.0.36 1/3 cents of land in the suit "A" schedule land. Pattadar pass books were also issued to defendant Nos.1 and 2 by the competent authorities in respect of suit "A" Schedule property and they have been paying taxes to their respective lands.

13. It is stated that the 1st plaintiff's husband G. Nageshwara Rao, used to do Government job, which he later left and did fish culture for some time. Subsequently, he started apartment construction business in Hyderabad. The said G.Nageshwara Rao, husband of the 1st plaintiff along with the 2nd defendant executed registered settlement deed dated 27.06.2008 in favour of him (1st defendant), conveying the suit 'B' schedule property site and building therein with absolute rights out of their love and affection towards him. Since then, he became the absolute owner of the suit 'B' schedule property and the said registered settlement deed dated 27.06.2008 was executed by the G.Nageshwara Rao and the 2nd defendant on their free will and volition, and the same was acted upon. Hence, the plaintiffs have no right to question the said registered settlement deed dated 27.06.2008.

14. It is also the case of the 1st defendant that, in the memory of his deceased parents, the 1st defendant has gifted the “Suit B” Schedule Property in favour of Radha Krishna Temple at Peddamiram by way of Registered Gift Settlement Deed dated 25.04.2015. Since then, the suit ‘B’ schedule property is in the possession and enjoyment of the Temple committee, and the said Temple committee has been paying the required taxes to the civic authority.

15. The said G.Nageswara Rao had never raised any objections against the execution of the said registered settlement deed as well as partition deed dated 27.06.2008 during his entire lifetime and the plaintiffs have no right to question the registered deeds. In a nutshell, the plaintiffs, despite knowing all the facts, including execution of said deeds, by suppressing the true facts, filed suit for partition, moreover, the 1st plaintiff had never demanded for partition as alleged in the plaint. Thus, the very suit for partition itself is liable to be dismissed with costs.

16. Defendant No.2 filed separate written statement on 04.06.2018 by reiterating the averments raised by the 1st defendant in his written statement.

17. The oral and documentary evidence adduced before the Trial Court by the respective parties are extracted in tabular format hereunder:-

Witnesses examined for the plaintiffs:

Sl.No.	Description of Witness
P.W.1	Goripati Jhansi
P.W.2	Nellore Dolendra Prasad
P.W.3	Danduboina Bhakta Srirama Tulasi Dasu

Documents marked on behalf of the plaintiffs:

Sl.No.	Date	Description of Document
Ex.A-1	27-06-2008	Registration extract of Partition Deed
Ex.A-2	27-06-2008	Registration extract of Settlement Deed
Ex.A-3	25-04-2015	Registration extract of Gift Settlement Deed

Witnesses examined for the defendants:

Sl.No.	Description of Witness
D.W.1	Goriparthi Srirama Murthy
D.W.2	Kona Veera Venkata Satyanarayana
D.W.2	Goriparthi Yedukondalu

Documents marked on behalf of the defendants:

Sl.No.	Date	Description of Document
Ex.B-1	--	Land sist receipts
Ex.B-2	--	House tax receipts
Ex.B-3	22-01-2019	Copy of Adangal issued by Mee-seva
Ex.B-4	--	Revenue Title Deed
Ex.B-5	--	Revenue Pattadar Pass Book
Ex.B-6	03-01-2012	Registration extract of Settlement Deed
Ex.B-7	31-07-1998	Registration extract of Sale Deed
Ex.B-8	29-12-2009	Registration extract of Release Deed
Ex.B-9	26-02-2009	Registration extract of Partition Deed

18. Basing on the above rival pleadings, the learned Trial Judge framed the following issues:-

“1. Whether the plaintiffs are entitled to get partition of plaintiff schedule properties into 3 equal shares and for allotment of 1/3rd share in plaintiff schedule properties to them?

2. Whether the plaintiffs are further entitled to get partition of 1/3rd share of deceased Goriparthi Nageswara Rao and for

allotment of 1/27th share to the 1st plaintiff, 1/9th share to the 2nd plaintiff and 1/27th share to 3rd plaintiff?

3. To what relief?

Addl. issues dated 23.10.2018:

1. Whether the plaintiffs are entitled for declaration that the Registered Settlement Deed dated 27-06-2018 vide Doc.No.2920/2008 is a fraudulent transaction?

2. Whether the Registered Sale Deeds, dated 27-06-2008 and 25-04-2015 are not true and valid and not binding on the 1st plaintiff's husband Goriparthi Nageswara Rao and the plaintiffs?

3. Whether the plaintiffs are entitled for declaration that the registered Partition, dated 27-06-2008 (Doc.No.2921/2008) is a fraudulent, collusive, sham and nominal document?

4. Whether the registered Partition Deed, dated 27-06-2008 is not true and valid and whether the same is brought into existence to defraud the 1st plaintiff's husband G. Nageswara Rao and the plaintiffs?"

Trial Court finding:

19. The learned Trial Court, after perceiving the rival pleadings and the documentary and oral evidence on record, initially framed two issues and thereafter framed additional issues. It seems in view of the nexus between the issues, the Trial Court clubbed all the issues together and arrived at its findings primarily holding that the plaintiffs were not able to establish their

case for partition in a cogent manner, more particularly, in respect of fraud, etc, and ultimately dismissed the suit without costs.

Submissions of the learned counsel for the appellants/plaintiffs:

20. Learned counsel for the appellants/plaintiffs advanced arguments and submitted that the Trial Court ought to have held that the plaintiffs are entitled to their share out of 1/3rd share of the deceased husband of the 1st plaintiff. He strenuously submitted that the registered settlement deed as well as registered partition deeds are only sham and nominal and also not binding upon the plaintiffs, as they have not been joined in the said documents at the time of execution. He also attacked on the partition deed dated 27.06.2008, stating that the same is not valid as there were inequitable shares and also that the Trial Court has not taken into account the interests of the plaintiffs, more particularly as one of the plaintiffs is minor. To bolster his arguments, the learned counsel for the appellants/plaintiffs relied upon the following decisions:

1. **Ratnam Chettiar Vs. S.M. Kuppuswami Chettiar-(1976) 1 SCC 214**
2. **Shri Omkar Vs. Shri Shambhaji-2021 Latest Caselaw 6242 Kant**
3. **Mr. Vinod Vs. Ms. Susheelamma-(2021) 20 SCC 180**
4. **Sri Prabhakar Vs. Dr. Suvarna-(2017)**
5. **Suhrid Singh Alias Sardool Singh Vs. Randhir Singh-AIR 2010 SC 2807**

Submissions of the learned counsel for the 1st respondent/defendant:

21. On the other hand, the learned counsel for the defendant No.1/respondent, while contending that Sri late G.Nageswara Rao, who is husband of the 1st plaintiff, is entitled for the partition and for the same, registered partition deed (Ex.A.1) and registered settlement deed (Ex.A.2) were executed during his life time, submitted that the very suit for partition itself is not maintainable.

22. He submitted that even according to the amended version of the plaintiffs they recognized the execution of registered settlement deed (Ex.A.2) and partition deed (Ex.A.1) by G.Nageswara Rao, but in order to overcome the same, plaintiffs as an afterthought took a plea by way of an amendment to the plaint that the said registered documents are sham, nominal, fraud and collusive without placing even an iota of cogent evidence in support of such allegations. Hence, the learned counsel submitted that the case of the plaintiffs is liable to be thrown out.

23. Learned counsel submitted that merely taking a plea of fraud and collusiveness without there being any foundational facts and evidence is not legal to re-open the settled terms by way of registered documents.

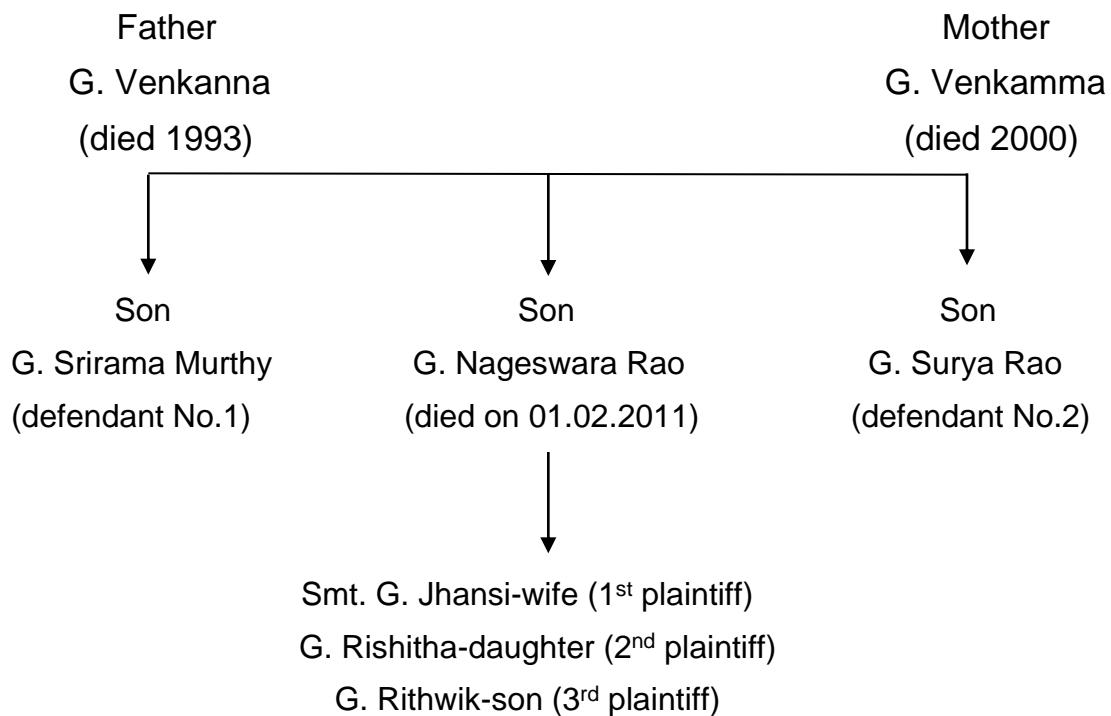
24. Learned counsel also submitted that claiming the minor's interest, in the absence of prejudice to that interest, and filing the suit for partition in the light of facts and circumstances involved in the lis is not legal and the same is liable to be dismissed.

Analysis of the Court:

25. After perceiving the above respective submissions of the parties, the following moot points arise for the comprehensive adjudication of the present appeal:-

1. Whether plaintiff Nos.1 to 3 are entitled to get partition of 1/3rd share of deceased G.Nageswara Rao and for allotment of 1/27th share, 1/9th share, 1/27th share respectively?
2. Whether the registered partition deed dated 27.06.2008 (Ex.A.1) and registered settlement deed dated 27.06.2008 (Ex.A.2) are sham, nominal and fraudulent documents? If so, when the reopening of the partition is permissible?

26. It is also relevant to note the genealogy tree of the family, to proceed further with the instant appeal:



Point Nos.1 & 2:

27. Undisputedly, even as per the assertions of both the plaintiffs and defendants, their common ancestors are G. Venkanna and G. Venkamma, the said couple was blessed with three sons i.e., the husband of the 1st plaintiff and the defendant Nos.1 & 2. Plaintiff Nos.2 & 3 are the children of the 1st plaintiff and her deceased husband.

28. Admittedly, both the suit schedule properties (A & B) were the self-acquired properties of the common ancestor and in terms of Section 8 of

the Hindu Succession Act, 1956, the undivided suit schedule properties are liable for partition among the three brothers, each being entitled to 1/3rd share.

29. So far as the plaintiffs' respective share in the 1/3rd undivided share of G. Nageswara Rao is concerned, the defendants put clogs by way of registered partition deed (Ex.A.1) and registered settlement deed (Ex.A.2), which were executed during the lifetime of the late G. Nageswara Rao as the same were acted upon also. Whereas, the plaintiffs filed suit for partition as the said the registered documents are sham, nominal, null, void and to defraud the said late G. Nageswara Rao and the plaintiffs they were brought into existence. In view of nature of the dispute, for the sake of comprehensive view, both points are dealt with commonly by us.

30. Partition is the severance of the status of a Joint Hindu Family. As per Hindu Law, the moment when the status of a Hindu Family is put to an end, there is a notional division of the said family properties among the members, as such, the very joint ownership of the property comes to an end. According to the ancient '*Manu Smruthi*':

'Once the partition of the inheritance is made, a damsel is given in marriage, and once a man says, 'I give', these acts of good men are done once for all and are irrevocable'.

31. However, there are certain exceptional circumstances under which partition may be reopened. In this scenario, it is important to state that any *smruthis*, customs, or practices will always be subject to the framework of Indian constitutional supremacy as well as within the statutory parameters prescribed under the Indian legislative realm only, and not anything above.

32. In the case of ***Ratnam Chettiar*** (supra), the Apex Court held that a partition effected between the members of a Hindu Undivided Family by their own free will and volition cannot be reopened unless it is demonstrated that the same was obtained by fraud, coercion, misrepresentation, or undue influence. When an undivided family consists of minors and the partition effected therein is proved to be inequitable, unfair and is detrimental to the interests of the minors, the partition can be reopened in spite of the length of time since the said partition took place.

33. In fact, in the said celebrated dictum penned by Sri Justice S. M. Fazal Ali, on a consideration of the legal position on the subject, the following propositions emerged:

“(1) A partition effected between the members of the Hindu undivides it is by their own volition and with their consent cannot be reopened, shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.

(2) When the partition is effected between the members of the Hindu undivided family which consists of minor coparceners it is binding on the minors also if it is done in good faith and in bona fide manner keeping into account the interests of the minors.

(3) Where, however, a partition effected between the members of the Hindu undivided family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place. In such a case it is the duty of the Court to protect and safeguard the interests of the minors and the onus of proof that the partition was just and fair is on the party supporting the partition.

(4) Where there is a partition of immovable and moveable properties but the two transactions are distinct and separable or have taken place at different times, if it is found that only one of these transactions is unjust and unfair it is open to the Court to maintain the transaction which is just and fair and to reopen the partition that is unjust and unfair."

34. The ***Ratnam Chettiar*** decision established several critical parameters for fraud-based reopening claims as below:

Firstly, the claimant must demonstrate that material facts were concealed or affirmatively misrepresented during partition proceedings.

Secondly, mere inequality of shares, absent fraudulent procurement, does not justify reopening where partition resulted from voluntary agreement.

Thirdly, courts must scrutinize reopening claims to prevent abuse through belated or speculative fraud allegations that might undermine partition finality.

35. In ***M.R. Vinoda*** case, the Hon'ble Supreme Court had held as under:-

".....25.....A karta can alienate the property when other coparceners have given consent. It is also settled that a karta

may alienate the joint family property for value, either for legal necessity or for the benefit of the estate, to bind the interests of all the undivided members of the family, whether they are adults or minors or widows. There are no specific grounds to prove the existence of legal necessity, and it must therefore depend on the facts of each case. A karta has wide discretion in the decision over the existence of legal necessity and as to in what way such legal necessity can be fulfilled.).....

.....34. The question of a transaction being void or, for that matter, the validity of the relinquishment in this case, much depends on the facts. It is an inquiry into the determination of relevant facts brought onto the record for the perusal of the court. The nature of transaction is required to be determined based on the substance and not the nomenclature of the deed. Documents are to be construed having regard to the context thereof whereof labels given to them will not be of much relevance. In the light of the factual position of this case as discussed above, we do not think that the relinquishment deed, even if there be a debate as to the legal necessity or lack of benefit, can be declared and treated as null and void....."

36. The ratio of the above decision does not lay down a general proposition permitting reopening of every concluded partition or family settlement, but applies only where actual inequity or exclusion by way of fraud played against the affected party and also leads to detriment to the minor's interest.

37. In light of the vital aspect of the fraud, in our opinion, it is apt to extract the definition of fraud enunciated in Section 17 of Indian Contract Act, 1872 as follows:-

17. 'Fraud' defined.—'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, enter into the contract:- with intent to deceive another party thereto or his agent, or to induce him

- to
- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- 2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation.— Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak!, or unless his silence, is, in itself, equivalent to speech.

From the above, it is clear that when a party or their agent, with intent to deceive another party or induce them into a contract, including suggesting untrue facts, actively concealing facts, promising performance without intent to fulfill, or any other deceptive act or omission declared fraudulent by law. It clarifies that mere silence isn't fraud unless there's a duty to speak or silence amounts to speech.

38. In Merriam's Webster Dictionary, the fraud has been defined as under:-

"1 a: any act, expression, omission, or concealment calculated to deceive another to his or her disadvantage; specific: a misrepresentation or concealment with reference to some fact material to a transaction that is made with knowledge of its falsity or in reckless disregard of its truth or

falsity and with the intent to deceive another and that is reasonably relied on by the other who is injured thereby

b: the affirmative defense of having acted in response to a fraud."

39. In the case of **S.P. Chengalvaraya Naidu Vs. Jagannath¹**, the Hon'ble Supreme Court vividly defined fraud as an act of deliberate deception with the desire of securing something by taking unfair advantage of another and held as below:

"...Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

40. Subsequently, the Apex Court in **A.V. Papayya Sastry Vs. Government of A.P.²**, had held as under:-

".....21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed: "Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

¹ (1994) 1 SCC 1

² 2007 (4) SCC 221

23. ***

24. In *Duchess of Kingstone*, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be *res judicata* and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said: fraud and justice never dwell together (*fraus et jus nunquam cohabitant*); or fraud and deceit ought to benefit none (*fraus et dolus nemini patrocinari debent*)....."

41. Further, the Three Judges Bench of the Apex Court in ***Nidhi Kaim Vs. State of Madhya Pradesh***³, discussed the fraud and its dimensions in the legal context.

42. It is worthwhile to note that the said factum of fraud must be asserted in the pleadings in the relevant provisions. In brief, the particulars to be given as per Order VI Rule 4 of Code of Civil Procedure, 1908 (in short 'C.P.C'), read hereunder:

"4. Particulars to be given where necessary.— In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which

particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

43. Order VI Rule 4 of C.P.C lays down that in all cases where a pleading by the party relies upon fraud, particulars with respect to the date and item, if necessary, shall be stated in the pleadings. The fraud as alleged in the plaint must contain those facts together taken as a whole, if proved, the fraud has to be shown and established.

44. It also emphasizes the requirement of disclosure of material details to give fair notice to the opposite party and prevent vague or bald allegations, mere use of the word "fraud" or general assertions is legally insufficient. The vital object of the provision is to ensure clarity, precision, and fairness in pleadings to enable effective adjudication, and prevent abuse of process. It is well settled that in the absence of specific and material pleadings constituting fraud, any evidence sought to be adduced in support of such a plea is wholly inadmissible.

45. It is well settled legal principle that fraud must be pleaded and proved. It is highly relevant to plead alleged fraud with all pre-requisite particulars & same must be proved with cogent and convincing evidence on

record. It is constituted in the ***Santosh Devi v. Sunder***⁴ case held as under:-

“.....18. “When fraud is alleged against the defendant, it is an acknowledged rule of pleading that the plaintiff must set forth the particulars of the fraud which he alleges....”

19. “It is not the mere use of general words such as ‘fraud’ that can serve as the foundation for the plea. Such expressions are quite ineffective to give the legal basis in the absence of particular statements of fact which alone can furnish the requisite basis for the action.....”

46. Very recently, the Hon’ble Supreme Court in the case of ***Vishnu Vardhan alias Vishnu Pradhan Vs. State of Uttar Pradesh***⁵ explained fraud by enunciating the multiple facets. The relevant portion of the said judgment is extracted hereunder:-

“3. “Fraud unravels everything” was famously said by Lord Denning in ***Lazarus Estates Ltd. v. Beasley***, emphasising that fraud can invalidate judgments, contracts and all transactions. The principle highlights the importance of honesty and transparency in legal proceedings and transactions. However, it is a cardinal principle of law that fraud has to be pleaded and proved. Order VI Rule 4, of the Civil Procedure Code, 1908 may be referred to ordaining that particulars, inter alia, of fraud have to be stated in the pleadings.

4. From the multiple decisions of this Court on ‘fraud’, what follows is that fraud and justice cannot dwell together, the legislature never intends to guard fraud, the question of limitation to exercise power does not arise, if fraud is proved, and even finality of litigation

⁴ 2025 SCC Online 1808

⁵ 2025 SCC OnLine SC 1501

cannot be pressed into service to absurd limits when a fraud is unravelled.....”

47. It is also relevant to note that *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) is one of the foundational legal principles of jurisprudence. If any act, contract and judgment obtained by a deceptive, dishonest or fraudulent way, the same cannot stand before adjudicatory forums, which also paving way to fraud vitiates everything. However, such a pivotal point of fraud must be pleaded and satisfactorily proved before the judicial forums without any iota of doubt, else it may lead to disastrous repercussions. Hence, to avoid such consequences, proper safeguards are devised under the Code of Civil Procedure, 1908.

48. Another significant facet is whether the minor's interest was prejudiced or not. If the same has pleaded and proved cogently, that would be one of the grounds to reopen the settled partition too.

49. Minor rights constitute valid ground for reopening of a partition reflecting courts' protective principle toward vulnerable family members. The Hon'ble Supreme Court in *Smt. Sukhrani (Dead) by L.Rs. & Ors v. Hari Shanker & Ors.*⁶, articulated seminal principles governing minors' partition rights. The Court held that when the partition is effected between

⁶ (1979) SCC (4) 463

the members of a Hindu Undivided Family, which consists of minor coparceners, it is binding on the minors also, if it is done in good faith and in a bona fide manner, keeping into account the interests of the minors. However, it emphasized that if the partition is proved to be unjust and unfair to the minor, it can be reopened. This protective doctrine aimed to set out minors' intellectual immaturity and also the Courts' '*parens patriae*' (parent of the nation) role so as to protect the minors' interests. But at the same time, the Hon'ble Supreme Court cautioned against avoiding stale claims under the umbrella of minors' interest without there being foundational prerequisites.

50. In the light of the well settled legal principles, we proceed to appreciate the facts and evidence produced before the Trial Court.

51. On a perusal of Ex.A.1 and Ex.A.2 (registered partition deed and settlement deed) goes to show that late G.Nageswara Rao, who is the husband of the 1st plaintiff during his lifetime, partitioned the joint family properties with his brothers and also settled their rights in favour of the 1st defendant along with another brother (defendant No.2).

52. The registration extract of the partition deed dated 27.06.2008 (Ex.A.1), which clearly shows that defendant Nos.1 and 2 and the 1st

plaintiff's husband namely, G. Nageswara Rao, divided and partitioned suit 'A' schedule property and the joint family cash of Rs.1,00,000/- among themselves. It is also evident from Ex.A.1 that Ac.0.78 2/3 cents of land classified as 'A' schedule property fell to the share of the 1st defendant, Ac.0.36½ cents of land classified as suit 'B' schedule fell to the share of the 2nd defendant and joint family cash of Rs.1,00,000/- was classified as 'C' schedule fell to the share of G. Nageswara Rao in terms of recitals made in Ex.A.1.

53. On the same day, the registered settlement deed dated 27.06.2008 (Ex.A.2), the 2nd defendant, as well as G. Nageswara Rao (husband of the 1st plaintiff) out of their love and affection towards the 1st defendant, they jointly executed registered settlement deed, whereby, conveying suit "B" schedule site and building therein, in favour of the 1st defendant with absolute rights. The photograph annexed at page No.8 of Ex.A.2 depicts that the said settlement deed was registered before the Sub-Registrar Office, Bhimavaram, with three brothers standing in front of the building. In fact, both Ex.A.1 and Ex.A.2 were signed by D.W.2 and D.W.3 as witnesses.

54. Insofar as registered gift settlement deed dated 25.04.2015 (Ex.A.3) is concerned, the 1st defendant, during the pendency of the suit in the memory of his late parents, executed gift settlement deed in the name of Radha Krishna Temple in respect of suit 'B' schedule property. Accordingly, the evidence on record has been acted upon for suit 'B' schedule property.

55. Even according to the version of the plaintiff's witness i.e., P.W.1, her husband pursued his studies at Nellore while staying in the house of the 1st defendant and after completion of his studies, he worked as Government Deputy Executive Engineer in the Panchayat Raj Department, A.P. Government. Thereafter, after doing prawn culture at Nellore District, he settled at Hyderabad doing the business of construction of apartments for about seven years prior to his death due to heart ailment. According to P.W.1, Sri late G. Nageswara Rao was on cordial terms with his brothers (defendant Nos.2 & 3) till his death and had no disputes whatsoever with them.

56. P.W.1 also deposed pattadar passbooks of suit "A" schedule property initially was in the name of her father-in-law (G. Venkanna) and after his death, the same stood in the name of her mother-in-law (G. Venkamma).

She further deposed that after the death of her mother-in-law, she did not know in whose favour the said pattadar passbooks were mutated, which reveals that she knew about the revenue records.

57. P.W.2 is a native and resident of Nellore and works as a journalist, deposed that G.Nageswara Rao was employed as an engineer in the Government Panchayat Raj department and did various businesses and settled at Hyderabad along with his family. P.W.2 also confirmed the cordial relationship of G.Nageswara Rao with his brothers (defendants 1 & 2). P.W.2 further deposed that he does not know about the execution of Ex.A.1 by the said G.Nageswara Rao. Further, he stated that he will identify the signatures of the husband of P.W.1. He also confirmed that the signatures in Ex.A.2 are similar to the signatures of the husband of P.W.1 (G.Nageswara Rao). Coming to the evidence of P.W.3, who is none other than P.W.1's younger sister's husband, had merely denied, by way of suggestions, the registered documents. Thus, the entire oral and documentary evidence adduced by the plaintiffs does not venture to state in respect of fraud in connection with the execution of registered documents and how it was played against the plaintiff's husband or the plaintiffs by the defendants.

58. Switching into the evidence of D.W.1 (defendant No.1), who stated that after the death of his parents, all three brothers jointly executed Ex.A.1 in the presence of witnesses who were examined as D.W.2 (Kona Veera Venkata Satyanarayana) and D.W.3 (G.Yedukondulu) in the present suit. All three brothers, with their consent and free will, partitioned the suit "A" schedule properties by way of a registered partition deed (Ex.A.1).

59. D.W.1 specifically stated that his brother, G.Nageswara Rao himself insisted for joint family cash for Rs 1,00,000/- should be allotted and given towards his share, as he required cash for his business purposes. As such, the defendants 1 & 2 agreed to take suit "A" schedule land and given joint family cash of Rs.1,00,000/- to said G.Nageswara Rao. Accordingly, registered partition deed (Ex.A.1) came into existence and also acted upon and the revenue authorities also issued land title deed (Ex.B.4) and the pattadar pass book (Ex.B.5) in his name. He also got marked cist receipts as Ex.B.1 and copy of the adangal as Ex.B.3.

60. D.W.1 further stated that the 2nd defendant, along with G.Nageswara Rao, jointly executed the registered settlement deed dated 27.06.2008 (Ex.A.2) out of their love and affection towards him, whereunder, conveying the suit "B" schedule site and building therein in favor of D.W 1. Thus, by virtue of registered deeds (Ex.A.1 & Ex.A.2), which were executed by

G.Nageswara Rao with all his conscious knowledge and consent only. He further deposed that in the memory of his deceased parents, D.W.1 has gifted suit 'B' schedule property in favor of Radha Krishna Temple by way of registered gift settlement deed dated 25.04.2015 (Ex.A.3).

61. D.W.2 is one of the witnesses of Ex. A1 as well as Ex.A.2, who had categorically deposed that the said documents were executed in his presence. Similarly, D.W.3, who is also one of the witnesses of Ex.A.1 and Ex.A.2, confirmed about the execution of said registered documents before him and deposed that a joint family cash of Rs 1,00,000/- has given to the husband of the 1st plaintiff towards his share under Ex.A.1.

62. Keeping in view the above overall evidence on record, it is crystal clear that P.W.1's husband G.Nageswara Rao studied at Nellore while staying in D.W.1's house. The said person is highly educated, and also got job as Deputy Executive Engineer in the Panchayat Raj department, Government of A.P. Later on, by purchasing prawn tank lands, he did business and engaged in construction business apartment at Hyderabad and settled along with his family at Hyderabad seven years before his death.

63. It is apt to note that the registered extract of settlement deed (Ex.B.6) clearly indicates that the 2nd defendant, out of his love and affection towards the 3rd plaintiff (minor), executed registered settlement deed dated 03.01.2012, thereby gifting the property comprising of Ac.6.15 ½ cents land situated at Ramudupalem Village, Indukuripeta, Nellore District. So far as the registration extract of the sale deed (Ex.B.7) shows that the 1st plaintiff in the capacity of managing partner of M/s. Rishi Constructions, Hyderabad, along with one A. Rama Rao, sold an apartment at Punjagutta, Hyderabad city.

64. Registration extract of the release deed dated 29.12.0209 (Ex.B.8) also reveals that D. Ashok Kumar and 2 others as land owners and M/s. Rishi Constructions, represented by its Managing Partner, G. Nageswara Rao, in the capacity of developer, jointly released rights over the flat No.503 in 'Rishi Mansions' situated at Maredpally, Secunderabad.

65. Apparently, the 1st plaintiff's husband settled at Hyderabad along with his family seven years ago and was doing the business of construction of apartments at Hyderabad prior to his death i.e., 01.02.2011. The said evidence corresponding to the year 2004 onwards, he started doing the construction of apartment business in Hyderabad. Admittedly, Ex.A.1 and

Ex.A.2 registered on 27.06.2008, which supports the version of D.W.1 that the 1st plaintiff's husband on his request to allot and handover joint family cash of Rs.1,00,000/- out of joint family properties for his business purpose and on his will and volition, they registered partition deed among the brothers. In fact, registered partition deed dated 26.02.2009 (Ex.A.9) clearly reveals that plaintiff Nos.2 and 3 also partitioned their family properties amicably.

66. It is also pertinent to note that the defendants, to prove their case, got marked Ex.B.3 to Ex.B.5, which are revenue records i.e., adangal, land title deed and pattadar pass book issued by the statutory authorities under A.P. Rights in Lands and Pattadar Passbooks Act, 1971 (Act 26 of 1971). Section 6 of the above enactment draws statutory presumptive value unless or until rebutted by the other side. Section 6 of Act 26 of 1971 is extracted hereunder:-

“....6. Presumption of correctness of entries in record of rights:—

Every entry in record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of this Act [the Credit agency shall enter the details in the electronically maintained Record of Rights to claim priority.].....”

67. Section 6 of ‘Act 26 of 1971’ provides for a presumption as to the correctness of entries made in the Record of Rights. In terms of the said

provision, every entry in the Record of Rights shall be presumed to be true until the contrary is proved. Though such entries by themselves do not confer or extinguish title, they carry a statutory presumption of correctness so long as they remain in force. In the absence of cogent and convincing evidence to the contrary, such entries cannot be lightly ignored or discredited and are required to be given due weight.

68. Learned counsel for the appellants/plaintiffs relied on ***Suhrid Singh Vs. Randhir Singh***, wherein the Hon'ble Supreme Court stressed the prayer portion and in that process, when the executant of the deed wants to annul the said deed, he has to seek cancellation of the deed. Whereas, non-executant of the deed has to seek declaration that the said deed is invalid or honest or illegal. In the instant case, the same is not in dispute and with due respect, the said ratio is not applicable to the instant facts in the lis.

69. Apropos to the judgments cited by the learned counsel for the appellants/plaintiffs in ***Omkar*** and ***Prabhakar***, rendered by the High Court of Karnataka, the facts and ratio laid down therein are clearly distinguishable and have no application to the facts of the present case. The decision in ***Omkar*** primarily deals with the manner of framing prayers

while seeking cancellation of registered deeds. Similarly, the decision in **Prabhakar's** case also does not advance the case of the plaintiffs, as the factual matrix and the issues involved therein are materially different from those arising in the present lis.

70. By perceiving the evidence adduced by the respective parties, it is apparent that the plaintiffs merely averred the ground of fraud and undue influence but they are not able to demonstrate the factum of fraud played either by the 1st defendant's husband, or against the plaintiffs, within the parameters of the well settled legal principles as clearly discussed supra. Pertaining to the minor's interest, plaintiffs are not able to bring their case within the ambit of prejudice caused to the minor.

71. The Hon'ble Supreme Court of India (Three Judge Bench) way back in the year 1950 itself, in the case of **Sarju Pershad v. Raja Jwaleshwari Pratap Narain Singh**⁷, while dealing with the powers of the first appellate court categorically held as under:-

“...8. The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of the oral evidence adduced in the case. In such cases, the appellate court has got to bear in mind that it has not the advantage which the trial Judge had in having the witnesses before him and of observing the manner in which they deposed in court. This certainly does not mean that

⁷ 1950 SCC 714

when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is, and it is nothing more than a rule of practice, that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the Trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact....."

72. In view of the aforesaid discussion and settled legal position, point Nos.1 & 2 are answered against the appellants/plaintiffs and in favour of the respondents/defendants.

73. We find no infirmity and error in the detailed and well-reasoned findings arrived by the Trial Court about fraud and the finality of partition. Therefore, the impugned judgment does not warrant any interference of this Court in the present appeal.

Conclusion:

74. In the result, the appeal is dismissed and the judgment and decree passed by the learned III Addl. District Judge, Bhimavaram, in O.S. No.12 of 2013 are hereby confirmed.

There shall be no order as to costs. As a sequel, all pending applications shall stand closed.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Dated 22.01.2026

GVK

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**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM**

A.S. No.512 of 2019

Dt. 22.01.2026

GVK