HIGH COURT OF ANDHRA PRADESH

Bench: JUSTICE V.SRINIVAS

Date of Decision: 16.04.2024]

APPEAL SUIT NO. 317 OF 2008

Palavalli Sugunamma, Palavalli Sunil @ Sunil Reddy, Palavalli Radhika …APPELLANTS

Versus

Palavalli Mallika, Palavalli Purohithi …RESPONDENTS

Legislation:

Section 96 of the Code of Civil Procedure, 1908

Section 307 of the Indian Penal Code, 1860

Section 16 of the Hindu Marriage Act, 1955

Section 52 of the Transfer of Property Act, 1882

Hindu Succession Act, 1956

Subject: Appeal challenging the trial court's judgment on the entitlement to past and future maintenance, marriage expenses, and partition of property among the family members, following the death of Palavali Viswanath.

Headnotes:

Maintenance and Marriage Expenses – Civil Appeal – Maintenance and marriage expenses claim by the daughter from the estate of Palavali Viswanath – High Court upholds trial court's award of past and future maintenance, as well as marriage expenses, recognizing the 2nd plaintiff as the legitimate daughter of the deceased based on DNA evidence –

Past maintenance of Rs. 2,000 per month from March 2001 to March 2004 and future maintenance of Rs. 2,000 per month for one year, along with Rs. 2,00,000 for marriage expenses, awarded. [Paras 2-31]

Paternity and Maintenance Claims – The trial court confirmed the paternity of the 2nd respondent as the daughter of deceased Viswanath via DNA testing, and entitled her to past and future maintenance, and marriage expenses [Paras 19, 29-30].

Partition of Property – Share Allocation – Daughter's entitlement to partition of family property – High Court modifies trial court's decision, granting the 2nd plaintiff a share in the notionally partitioned share of her father, Palavali Viswanath, instead of equal share in all joint family properties – Establishes the extent of property share for a legitimate daughter born out of a void or voidable marriage under the Hindu Marriage Act. [Paras 32-45]

Appeal Outcome – Appeal partly allowed; modifications made to the trial court's judgment concerning the extent of share in partition entitlement to the 2nd respondent, rest of the judgment confirmed [Paras 45-46].

Referred Cases:

- Revanasiddappa v. Mallikarjun (2023) 10 SCC 1
- Raja Gounder v. M.Sengodan (2024 SCC Online SC 55)
- Jaksani Lakshman Rao v. Ellandula Ravinder (2007) 2 ALT 41
- Vidyawati v. Man Mohan (1995) AIR SC 1653

Representing Advocates:

For the Appellants: Sri J.Ugra Narasimha, representing Sri A.Manjunath

For the Respondents: Sri V.V.S.Murali Krishna

JUDGMENT:

This regular appeal under Section 96 Code of Civil Procedure is directed against the decree and judgment in O.S.No.21 of 2005 dated 30.01.2008 on the file of the Court of learned II Additional District Judge, Madanapalle.

2. The defendant Nos.2 to 4, before the trial Court, are the appellants. The respondents herein are the plaintiffs. During the pendency of the suit itself the 1st defendant Viswanath died.

3. The respondents instituted the suit against the appellants and deceased Viswanath for past maintenance from March, 2001 to March, 2004, future maintenance for one year at Rs.4,000/- and Rs.5,000/- per month to the 1st and 2nd respondents respectively; directing them to pay Rs.10,00,000/- to the 2nd respondent towards marriage expenses; partition of plaint 'A' and 'B' schedule properties into two equal shares by metes and bounds; allot one such share to the 2nd respondent; creation of charge over the said property with respect to the claim of the maintenance of the respondents and for costs.

4. Before adverting to the material and evidence on record and nature of findings in the judgment of the trial Court, it is necessary to scan through the case pleaded by the parties in their respective pleadings.

5. The case of the respondents/plaintiffs in brief in the plaint was as follows:

(i) The marriage between the 1st respondent and Palavali Viswanath/1st defendant took place about 25 years prior to the filing of the suit at Lord Venkateswara Temple, Tirumala of Chittor District by converting her religion from Muslim to Hindu. Due to wedlock, the

2nd respondent was born to them on 23.07.1984 and they lead marital life happily for about five years.

(ii) Thereafter, the said Viswanath started to harass her on account of his vices and due to her failure to give birth to a male child. About three years prior to the suit, the said Viswanath left the house of respondents and started to reside at his native place Kalikiri with another lady.

(iii) When the respondents questioned him, he along his concubine beat them, necked out from the house and also threatened them to kill, if they claim any status in future. As the said Viswanath is trying to sell away the properties, the respondents got issued a legal notice dated 27.03.2004. Hence, the suit.

6. The defendant No.1 denying the allegations in the plaint and contending in the written statement as follows:

(i) The respondents have purposefully and wrongly mentioned their surname as “Palavali” so as to lay false claim against him and the 1st respondent belonging to Muslim religion has got the surname of “Shaik” and she married her neighbor by name Babu, S/o.V.Basappa on 12.06.1981. Due to such wedlock, the 2nd respondent was born to them and the said marriage was duly registered by the Sub-Registrar, Madanapalle under Special Marriage Act. He never married the 1st respondent and she is not his legally wedded wife and 2nd respondent was not born to him.

(ii) He married one Suguna in the year, 1975 and due to their wedlock, one male child and one female child by name Sunil Reddy and Radhika were born. He is not the owner of item Nos.1 to 5 of plaint ‘A’ schedule nor getting any income nor owned any movables as detailed in plaint ‘B’ schedule and he incurred debts of Rs.5,00,000/- from various persons for the family expenses.

(iii) The 2nd respondent at the instigation of the 1st respondent filed a false criminal complaint before II Town Police Station, Madanapalle for the offence under Section 307 of IPC in Cr.No.151 of 2005 against him stating that the 1st respondent has got Ac.04.00 cents of agricultural land and one house from her husband Babu, who died about two years prior to filing of his written

statement and in addition having another house in Jandla village. Hence, prays to dismiss the suit with costs.

7. As stated supra, during the pendency of the suit itself, the said Viswanath/1st defendant died and the appellant Nos.1 to 3 were impleaded as wife and children of the deceased 1st defendant. Then the 1st appellant filed her written statement, which was adopted by the appellant Nos.2 and 3 by filing a memo, reiterating the contentions taken by the 1st defendant and also contended as follows:

She is legally wedded wife of first defendant Viswanath and the item Nos.1 and 2 of plaint 'A' schedule and item No.3 of plaint 'B' schedule are her self-acquired properties; that item Nos.3 and 5 of plaint 'A' schedule along with other properties were bequeathed to the 2nd appellant by his paternal grand-mother under a Will, dated 19.02.1980; that item No.4 of plaint 'A' schedule was gifted by the deceased 1st defendant Viswanath to the 2nd appellant and that item Nos.1 and 2 of plaint 'B' schedule have not been in existence.

8. On these pleadings, the trial Court settled the following issues for trial:

"1.Whether the plaintiffs are entitled to have past and future maintenance against the defendant and if it is so, at what rate?

2. Whether the 2nd plaintiff is entitled to have Rs.10,00,000/- towards her marriage expenses against the defendant?

3. Whether the 2nd plaintiff is entitled to have partition of plaint 'A' and 'B' schedule properties into two equal shares by metes and bounds; allotment of one such share to her and to have creation of charge with respect to her share in such properties?

4. Whether the 1st plaintiff is not the legally wedded wife of the defendant?

5. Whether the 2nd plaintiff is not the daughter of the defendant? and

6. To what relief?"

9. At the trial, on behalf of the respondents/plaintiffs, P.Ws.1 to 6 were examined while relying on Exs.A.1 to A.11, X.1, X.6 to X.11 in support of their contentions. On behalf of the appellants/defendants, D.Ws.1 to 6 were examined and Exs.B.1 to B.12, X.2 to X.5 and

X.12 were exhibited.

10. Basing on the material and evidence, trial Court came to a conclusion that the first respondent is not the legally wedded wife of the 1st defendant, but the 2nd respondent is the daughter of the 1st defendant and she is entitled for partition of all items of plaint 'A' schedule, except 505 8/9 square yards in item No.2 of the property covered under Ex.B.2, into three equal shares and allot one such share to her, also granted past maintenance at Rs.2,000/- per month from March, 2001 to March, 2004, future maintenance at Rs.2,000/- per month for a period of one year, Rs.2,00,000/- towards her marriage expenses against the estate of the deceased 1st defendant lying in the hands of the appellant Nos.1 to 3 and the other reliefs are concerned, the suit is liable for dismissal, thus, preliminarily decreed the suit in part without costs.

11. It is against this decree and judgment, the appellants/defendants preferred this appeal.

12. Heard, Sri J.Ugra Narasimha learned Counsel representing Sri A.Manjunath, learned counsel for the appellants/defendants and Sri V.V.S.Murali Krishna, learned counsel for the respondents/plaintiffs.

13. For the sake of convenience, the parties hereinafter referred to as they arrayed before the trial Court.

14. It is against this backdrop, the following points, which arise for determination need consideration now:

1. Whether the deceased 1st defendant-Palavali Viswanath is the biological father of 2nd plaintiff/2nd respondent, if so, she is entitled for past and future maintenance from the estate of said Viswanath, to have partition over the plaint schedule properties and to what extent?
2. Whether Exs.B.10 and B.12 Will, dated 19.02.1980 and Gift Settlement Deed, dated 01.09.2005 respectively are genuine and they can be relied upon? and
3. To what relief?

15. **POINT Nos.1 & 2**:

Sri J.Ugra Narasimha learned Counsel representing on behalf of Sri A.Manjunath, learned counsel for the appellants/defendants submits that the 2nd respondent/2nd plaintiff herein is not the daughter of the deceased 1st defendant and she has not filed any documents to prove the paternity; that Ex.A.11 was issued only on humanitarian grounds and not otherwise; that another suit is pending between 1st appellant and one Krishnaveni regarding the same schedule property; that the D.N.A. test is not conducted properly by P.W.6 expert; that Expert has not given descriptive reasoning in writing to support the opinion which is a vital ground to reject the D.N.A. test; that P.W.1 has not produced any evidence to show that there is any access between her and deceased 1st defendant and they did not live as husband and wife for some years as contended; that the trial Court ought to have consider Exs.B.10 and B.12 Will and Gift Deed respectively and that the trial Court erred in awarding maintenance to the 2nd respondent.

16. He further submits that even if the 2nd respondent entitled for a share on partition, the conclusion arrived by the trial Court regarding extent entitled by her on par with the legitimate children of deceased Viswanath is not permissible under law in particular Section 16 of Hindu Marriage and thereby, he prays to allow the appeal. In support of his contentions, he relied upon a judgment of the Hon'ble Supreme Court in ***Revanasiddappa v. Mallikarjun***[1].

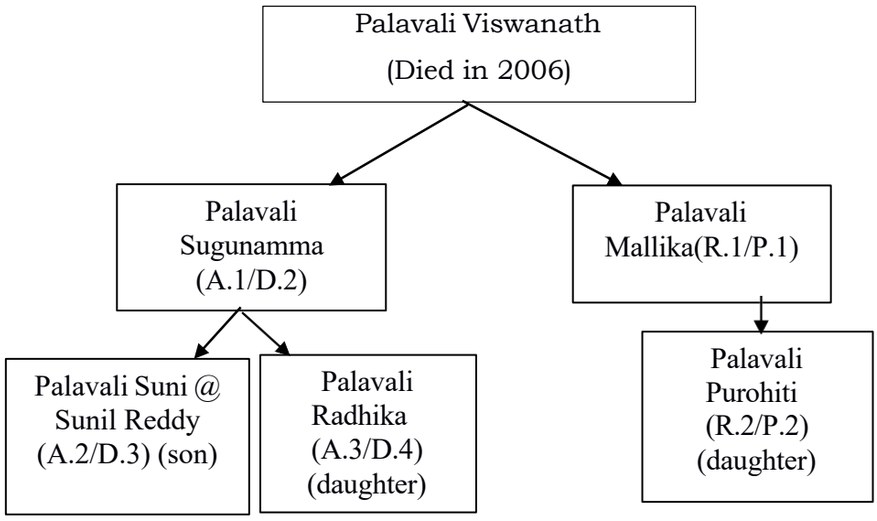
17. As against the same, Sri V.V.S.Murali Krishna, learned counsel for the respondents/plaintiffs submits that the present appeal was filed without any proper cause and to drag the litigation further; that the trial Court thoroughly evaluating the material on record and discussed at length in paragraph Nos.20, 21 and 22 of the judgment; the trial Court has given proper credence to Exs.A.1 to A.11 by observing the facts; that the D.N.A. Test was properly conducted by P.W.6 expert without any faults and deviation from the procedure; that the said D.N.A. Test was rightly accepted by the trial Court by taking into consideration of all the aspects; that even as per the material available on record there is access between 1st plaintiff and deceased 1st defendant and they lived for some years as husband and wife; that the documentary evidence adduced

by the plaintiffs corroborates with the D.N.A. Test conducted by P.W.6; that the trial Court rightly discarded the evidence of D.W.2, who is attesting witness of Ex.B.10 Will as he failed to inspire any confidence in the mind of the Court; that the trial Court has rightly come to the conclusion that Ex.B.10 is not a genuine document and the same is not executed by P.Gangulamma as claimed by the appellants/defendants; that the trial Court rightly ignore Ex.B.12, as it was not support any other material either oral or documentary; that trial Court on considering the facts and circumstances, material on record rightly decreed the suit; that there are no grounds to interfere with the well-articulated judgment of the trial Court and that the appeal is liable to be dismissed with costs.

18. In view of the above rival submissions, this Court perused the entire material on record. Admittedly, plaintiffs did not prefer any appeal against the decree and judgment passed by the trial Court in rejecting the claim made by the 1st plaintiff and findings arrived by the trial Court.

19. As such, now, the scope of the present appeal is very limited that whether 2nd plaintiff is entitled for the reliefs granted by the trial Court being daughter of the deceased Palavali Viswanath/defendant No.1.

20. At this point of time, a genealogy is useful to appreciate the relationship between the parties.



21. Firstly, this Court intends to clarify the issue that whether deceased 1st defendant Palavali Viswanath is the biological father of the 2nd plaintiff. Though, it is the case of the plaintiffs that 1st plaintiff is the legally weeded wife of the deceased Viswanath, but the same is not accepted by the trial Court, which is remained unchallenged. However, the trial Court after evaluating the material placed on the record categorically found that the 2nd plaintiff is the daughter of said Viswanath.

22. On perusal of Exs.A.3, A.4, A.6, A.9 and A.10 i.e., Photostat copy of Community, Nativity and Date of Birth Certificate of 2nd plaintiff, Photostat copy of residence certificate, Birth Certificate of 2nd plaintiff, Voter identity card 2nd plaintiff and Bonafide Certificate, dated 23.12.2005 issued by PES Institute of Medical Sciences and Research at Kuppam respectively, the 2nd plaintiff was referred as daughter of deceased Viswanath. But the above documents are not the criteria to decide the issue. It is only useful to the extent of corroborating the other admissible evidence on record.

23. Now, it is relevant to refer the testimony of P.Ws.5 and 6 and documents marked as Exs.X.1 and X.6 to X.11. On perusal of Ex.X.7, the Director, Andhra Pradesh Forensic Laboratory, Red Hills, Hyderabad addressed a letter to the Sub-Divisional Police Officer, Madanapalle for sending the plaintiffs and 1st defendant (Viswanath) for D.N.A. test and under the cover of Ex.X.11, they were sent for D.N.A. test along with police escort. Thereafter, the Scientific Officer collected blood samples under the cover of Exs.X.8 to X.10 attested identification forms and subjected the same to autosomal S.T.R. analysis by using identifier kit, analyzed the same and conclude that the 1st defendant (Viswanath) is the biological father of the 2nd plaintiff born through 1st plaintiff and issued his opinion under the cover of Ex.X.1, which can be accepted as conclusive proof.

24. The plaintiffs got examined P.W.5-Sub Divisional Police Officer, Madanapalle and he produced Ex.X.1 photostat copy of Expert

Opinion and the same was admitted with the consent of learned counsel after comparing the same with the original.

25. The plaintiff also got examined P.W.6 Scientific Officer, who took the blood samples of the plaintiffs and 1st defendant, conducted DNA test and issued his opinion under the original of Ex.X.1. He gave details about the procedure of conducting the DNA test and reasons for coming such an opinion.

26. On perusal of Ex.X.1, the opinion given by P.W.6 was approved by Joint Director and made an endorsement thereunder. Nothing was elicited during the cross examination to disbelieve his testimony. Furthermore, no contra evidence was adduced to disbelieve the testimonies of P.Ws.5 and 6, Exs.X.1 and X.6 to X.11.

27. Even it is contended by the learned counsel for the defendants that Ex.X.1 cannot be called as correct because at the time of collecting samples, if the individuals have undergone blood transfusion within three months prior to the date of their examination, the opinion cannot be taken into consideration. But it is not at all the case of the defendants either in the written statement or anywhere that either first defendant or plaintiffs had undergone blood transfusion within three months prior to their examination. Thereby, the testimony of P.W.6 and Ex.X.1 opinion given by him can be relied upon.

28. In view of the testimony of P.Ws.5 and 6, Exs.X.1 and X.6 to X.11, it is crystal clear that the deceased 1st defendant Viswanath is the biological father of the 2nd plaintiff. The trial Court elaborately discussed on this point and rightly concluded that the deceased Viswanath is the biological father of the 2nd plaintiff. There is nothing on record placed by the defendants to rebut the said conclusions arrived by

the trial Court. As such, it is categorically proved that 2nd plaintiff is the daughter of the deceased 1st defendant Viswanath.

29. Coming to the quantum of past and future maintenance granted to the 2nd plaintiff is concerned, by the time of pending the suit, 2nd plaintiff pursuing M.B.B.S course at Kuppam and she

claimed Rs.5,000/- per month towards maintenance. The trial Court on considering the facts and circumstances, granted Rs.2,000/- per month towards past maintenance from March, 2001 to March, 2004 and Rs.2,000/- per month towards future maintenance for a period of one year against the estate of the deceased Viswanath lying in the hands of the defendant Nos.2 to 4.

30. It is also claimed by the plaintiffs that Rs.10,00,000/- towards marriage expenses of 2nd plaintiff. But, on considering the social status and educational qualification of the 2nd respondent, the trial Court granted Rs.2,00,000/- towards her marriage expenses.

31. As discussed supra, it is categorically proved and established by the plaintiffs that the 2nd plaintiff is the daughter of the deceased 1st defendant Viswanath, it is an obligation on his part to maintain her and attend her needs. Since, he died intestate, the trial Court after considering the facts and circumstances, rightly awarded the said amounts towards past and future maintenance for the said period, marriage expenses from the estate of the deceased 1st defendant lying in the hands of the defendant Nos.2 to 4. As such, there are no grounds warrants this Court to interfere with the same.

32. Now, this Court has to see whether the plaint schedule properties are available for partition between the parties by deciding the genuinety or otherwise of Exs.B.10 and B.12 i.e., Will, dated 19.02,1980 and Gift Settlement Deed, dated 01.09.2005.

33. The trial Court gave a finding that except 505 8/9 square yards in item No.2 of the 'A' schedule covered under
Ex.B.2, all the other properties are joint family properties, which is remained unchallenged by the plaintiffs. So, this Court is not required to examine the genuinety or otherwise of Ex.B.2 certified photostat copy of sale deed, dated 16.08.1995 executed by one V.Ramadevi in favour of 2nd defendant.

34. However, 2nd plaintiff claimed partition of plaint 'A' and 'B' schedule properties towards half share before the trial Court. The existence of plaint 'A' schedule is not disputed by the defendants as admitted by D.W.1. But the trial Court gave categorical findings that the 2nd plaintiff failed to prove the nature of 'B' schedule properties, which are movable properties, as joint family property and is not entitled to have partition of the same, which is also remained unchallenged by the plaintiffs.

35. According to defendant Nos.2 to 4 part of item No.2 and entire extent of item No.7 of plaint 'A' schedule were purchased by the mother of the deceased 1st defendant by name P.Gangulamma under the original of Exs.B.3 to B.5. It is the specific case of the defendants that P.Gangulamma bequeathed all her properties under

Ex.B.10 Will to the 3rd defendant being vested remainder on 19.02.1980 and that such property cannot be called as joint family property. As such, the burden is upon the defendants to prove Ex.B.10 Will is a genuine one and it can be relied upon. For which, they examined D.W.2, who is said to be one of the attestor of Ex.B.10, before the trial Court. But he categorically testified during cross examination that by the time he reached the place of execution of Ex.B.10, it was written. He does not know the contents therein. He has not seen about the putting of thumb mark by Gangulamma in Ex.B.10. Moreover, D.W.2 further testified during cross examination that P.Gangulamma put her thumbmark in Ex.B.10, whereas, on perusal of Ex.B.10, P.Gangulamma put her signature. So, the abnormal and inconsistent testimony of D.W.2 does not inspire confidence in the mind of the Court to come a conclusion that Ex.B.10 is a genuine and it can be relied upon.

36. Though, defendants got examined D.W.3 said to be scribe of Ex.B.10, his evidence is not up to mark, because he cannot play the role of attestor. Furthermore, on perusal of Ex.B.10 it is not a registered document, even it is also not the case of the defendants that immediately after execution of Ex.B.10, P.Gangullama died and it is her last Will. Therefore, all the above facts and circumstances, creates any amount of suspicion regarding execution of alleged Ex.B.10 Will. More so, the non-mentioning about the said Will in the written statement of the 1st defendant is also creating any amount of suspicion about the existence of said Will by that time. Hence, this Court is of the considered opinion that the trial Court rightly concluded that the defendants failed to prove the genuineness or otherwise of Ex.B.10. As such, part of item No.2 and entire extent of item No.7 of plaint ‘A’ schedule properties were considered as joint family properties.

37. With regard to the other items of plaint ‘A’ schedule, the defendant did not take any cogent and consistent plea either in the written statement or adduced any evidence to that extent. Even the 1st defendant did not take any plea in the written statement that the

said properties are not the joint family properties. As such, the defendant Nos.2 to 4 being legal heirs of the 1st defendant, who were brought on record subsequently, cannot take such pela. The said theory is fortified by a judgment of Hon'ble Supreme Court in ***Vidyawati v. Man Mohan***[2], which is relied on by the trial Court.

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38. Now, coming to Ex.B.12 Gift settlement deed dated 01.09.2005 executed by the 1st defendant in favour of 3rd defendant. Under Ex.B.12 the part of item No.4 of plaint 'A' of schedule property was gifted to 3rd defendant by the 1st defendant. Except marking, defendants have not proved the same by examining anyone of the attestors before the trial [2] 1995 AIR (SC) 1653 Court. Even the alleged donee of Ex.B.12 i.e., 3rd defendant also not entered into witness box before the trial Court for the reasons best known to them. More so, the transaction under Ex.B.12 went on pending proceedings of the Suit, which is hit by Section 52 of the Transfer of Property Act and would not have any legal sanctity. The same is fortified by a judgment of the Division Bench of this Court in ***Jaksani Lakshman Rao***

v. Ellandula Ravinder[3], which is also relied upon by the trial Court. Furthermore, it is not the case of the 1st defendant that he gifted the said property under Ex.B.12 in favour of 3rd defendant. Viewing from any angle the defendants failed to prove Ex.B.12 by adducing any evidence, which is nothing but concocted document. Thereby, the documents under Exs.B.10 and B.12 are not proved by the defendants and they cannot be relied upon. As such, the trial Court rightly rejected the said documents *in-limine*.

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[3] 2007 (2) ALT 41

39. In view of the above discussion, it is clear and categorical that except 505 8/9 square yards in item No.2 of the plaint 'A' Schedule properties covered under original of Ex.B.2, remaining all the items in 'A' schedule are joint family properties and amenable for partition.

40. Now, it is appropriate to decide to what extent in the properties covered under 'A' schedule entitled by the 2nd plaintiff towards her share in the partition.

41. On perusal of the trial Court judgment, the learned District Judge, while considering the entitlement of the 2nd plaintiff over the plaint schedule properties as daughter of the deceased 1st defendant Viswanath, ordered partition of all the items of plaint 'A' schedule, except 505 8/9 square yards covered in item No.2 of the same under Ex.B.2, which are joint family properties, into three equal shares and allot one such share to the 2nd plaintiff.

42. In this context, the learned counsel for the defendants/appellants vehemently contended that the trial Court erred in ordering partition of all the items of 'A' schedule properties into three equal shares and allot one such share to the 2nd plaintiff, because the 2nd plaintiff being illegitimate daughter of the 1st defendant cannot claim share on par with the legitimate children. In support of this contention, he relied upon a Three-Judge Bench decision of the Hon'ble Supreme Court in ***Revanasiddapa case*** (referred to supra) and strongly opposed the extent of share ordered by the trial Court in the entire property and submits that even if the Court opined that the 2nd plaintiff entitled for a share in the joint family properties, she would have been allotted only to notionally partitioned share of deceased 1st defendant Viswanath.

43. Now, it is apposite to refer a very recent judgment of the Hon'ble Supreme Court in ***Raja Gounder v. M.Sengodan***[4], wherein also referred and relied on ***Revanasiddapa case*** and held at paragraph Nos.17 and 18 as follows:

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4 2024 SCC Online SC 55

“17.The above discussion takes us to point out a common infirmity in the examination of issues by the Trial and the Appellate Courts. The suit is one for partition, and the shares are dependent upon the nature of status and the time at which the partition is decreed. It is axiomatic that the shares fluctuate not only with the happening of events in the family but also with the circumstances established by the parties to the lis. In the present case, the claim as a coparcenary is unacceptable for want of evidence on the factum of the marriage of Muthusamy Gounder with Appellant No. 2 and Respondent No. 2; the courts below ought to have considered the relief from admitted circumstances on record. Hence, the argument of Respondent No. 3 that the status of Appellant Nos. 1 and 3; and Respondent No. 1 as the children of Muthusamy Gounder is without evidence is untenable and rejected accordingly. At this stage, it is apposite to refer to the conclusions laid down in Revanasiddappa (supra):-

"81. We now formulate our conclusions in the following terms:

81.1. In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether: (i) such a child is born before or after the commencement of the amending Act, 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

81.2. In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child "begotten or conceived" before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of ullity;

81.3. While conferring legitimacy in terms of sub-section

(1) on a child born from a void marriage and under sub- section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in sub-section (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

81.4. While construing the provisions of Section 3(j) of the HSA, 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA, 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA, 1956. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 of the HMA would, for the purposes of Section 3(j) of the HSA, 1956, fall within the ambit of the explanation "related by legitimate kinship" and cannot be regarded as an "illegitimate child" for the purposes of the proviso;

81.5. Section 6 of the HSA, 1956 continues to recognize the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;

81.6. Section 6 of the HSA, 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9-9-2005 by the amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of subsection (3) of Section 6 as amended, on a Hindu dying after the commencement of the amending Act of 2005 his interest in the property of a joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a joint Hindu family governed by Mitakshara law has been made the norm;

81.7. Section 8 of the HSA, 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;

81.8. While providing for the devolution of the interest of a Hindu in the property of a joint Hindu family governed by Mitakshara law, dying after the commencement of the amending Act of 2005 by testamentary or intestate succession, Section 6(3) lays down a legal fiction, namely, that "the coparcenary property shall be deemed to have been divided as if a partition had taken place". According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;

81.9. For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener, namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA, 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

81.10. The provisions of the HSA, 1956 have to be harmonised with the mandate in Section 16(3) of the HMA, 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub- section (3), as

interpreted above."

18. By applying the above principle on the entitlement of share to the children of void or voidable marriages, the judgements under appeal are liable to be set aside and are accordingly set aside. We allow the appeal by passing a preliminary decree of partition for the plaint schedule properties, firstly between Respondent No. 3 and Muthusamy Gounder. Secondly, in the notionally partitioned share of Muthusamy Gounder, his children, i.e., Appellant Nos. 1 and 3, Respondent No. 1 and Respondent No. 3 are allotted equal shares."

44. In view of the categorically observations made by the Hon'ble Supreme Court in the above judgment, by applying the principle on the entitlement of share to the children of void or voidable marriages, this Court is of the considered opinion that the 2nd plaintiff is entitled to a share in the notionally partition share of deceased 1st defendant Viswanath, but not in the entire properties, which are joint family and amenable for partition. Thereby, this Court has no hesitation to hold that the trial Court erred in granting a share to the 2nd plaintiff equally on par with the defendant Nos.3 and 4 from the entire properties in 'A' schedule. Thereby, these points are answered accordingly.

45. **POINT No.3**:

In view of the findings on point Nos.1 and 2, this Court is of the considered opinion that the trial Court rightly appreciated the material on record on all the issues regarding entitlement of the 2nd plaintiff for partition of the properties being daughter of the deceased 1st defendant, except the extent of share entitled by her and erred in allotting share on par with the defendant Nos.3 and 4 in the entire joint family properties. Thereby, the appeal is liable to be considered to that extent only.

46. In the result, the appeal is partly allowed by passing a preliminary decree of partition for the plaint 'A' schedule properties, except 505 8/9 square yards in item No.2 of the same covered under the original of Ex.B.2 Sale Deed, by metes and bounds, firstly between appellant Nos.2 & 3 and Palavali Viswanath (father). Secondly, in the notionally partitioned share of deceased Palavali Viswanath, his children i.e., appellant Nos.2 and 3/defendant Nos.3

and 4 and respondent No.2/plaintiff No.2 herein are allotted equal shares. The rest of the decree and judgment dated 30.01.2008 in O.S.No.21 of 2005 passed by the Court of learned II Additional District Judge at Madanapalle regarding past and future maintenance, marriage expenses payable from the estate of deceased Palavali Viswanath, which is lying in the hands of appellant Nos.1 to 3 and dismissal of the suit for other claims made by the respondents/plaintiffs, shall stands confirmed. There shall be no order as to costs.

47. Interim orders granted earlier if any, stand vacated.

48. Miscellaneous petitions pending if any, stand closed.