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APHC010084712003

**IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI [3520]**
**(Special Original Jurisdiction)**

WEDNESDAY, THE 11th DAY OF NOVEMBER 2026

**PRESENT**

**THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA**

**APPEAL SUIT NO: 3356/2003**

**Between:**

1. M. VENKATA SOMASEKHARA RAO @, V.N.S.S.SOMASEKHAR RAO S/O. LATE SUBBA RAO BUSINESS R/O. GUNDUGOLANU, BHIMADOLE MANDAL, ELURU,

**...APPELLANT**

**AND**

1. T SUSEELA ALIAS VENKATA SLUSEELA, W/O. VENKATA RAMA MOLHANA RAO HOUSE HOLD R/O. KANDAKAM STREET, ELURU, ELURU DMC
2. C MANGARAJU, S/O. SREERAMULU CLERK IN CLOTH SHOP SOUTHERN STEET, ELURU, ELLURU DMC
3. CH PRABAKARA RAO, S/O MANGARAJU CLOTH VENDOR SOUTHERN STEET, ELURU, ELLURU DMC
4. CH BHASKARA RAO, S/O MANGARAJU CLOTH BUSINESS MADAVARI STREET, WESTERN STREET, ELURU, ELLURU DMC
5. CH DURGA RAO DIED EXEMPTED TO BRING THEIR LR ON RECORD, IN THE APPEAL AS PER THE HON'BLE C.O.DT:30-12-15 IN ASMP-2299/15. S/O MANGARAJU CLERK SOUTHERN STREET, ELURU, ELLURU DMC
6. CH SRINIVASA RAO, S/O MANGARAJU CLERK SOUTHERN STREET, ELURU, ELLURU DMC
7. SMT CH LAKSHMI, D/O MANGARAJU HOUSEWIFE SOUTHERN STREET, ELURU, ELLURU DMC

8. SMT TAMANNA KALI KUMARI, W/O SUBBA RAO HOUSEWIFE SOUTHERN STREET, ELURU, ELLURU DMC
9. CH RAJESWARI DIED IS EXEMPTED TO BRING THEIR LR ON, RECORD IN THE APPEAL AS PER THE HON'BLE C.O.DT:30-12-15 IN ASMP-2299/15. W/O SRINIVASA RAO HOUSEWIFE SOUTHERN STREET, ELURU, ELLURU DMC
10. M KRISHNA, AGRICULTURE R/O. BHIMADOLE, BHIMADOLE (M), ELURU DMC
11. B ANJANEYULU, S/O. NARASIMHA RAO AGRIL. R/O. GUNDUGOLANU, BHIMADOLE (M), ELURU DMC
12. THE BRANCH MANAGER, ANDHRA BANK GUNDUGOLANU, BHIMADOLE (M), ELURU DMC

**...RESPONDENT(S):**

Appeaa filed Under Section 96 of CPC before the High Court , Aappeal against the Judgment and Decree of the Additional Senior Civil Judge, Eluru passed in O.S.No.221 of 1987, dt.16-12-2002

**IA NO: 2 OF 2003(CMP 10853 OF 2003**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

**IA NO: 3 OF 2003(CMP 22075 OF 2003**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 73 days in representing the above appeal and pass such other order or orders

**IA NO: 4 OF 2003(CMP 23113 OF 2003**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay further proceedings in OS No. 221/1987 on the file of court of Additional Senior Civil Judge,Eluru W.G. District pending disposal of AS.

**IA NO: 2 OF 2004(XOBJ 6296 OF 2004**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

**IA NO: 1 OF 2006(ASMP 1005 OF 2006**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 661 days in payment of defeict court fee in Cross Objections, SR No. 6296/04 in the interest of justice

**IA NO: 2 OF 2006(ASMP 1006 OF 2006**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 744 days in representing the returend Cross Objections, SR No. 6296/04 in the interest of justice

**IA NO: 1 OF 2011(ASMP 2589 OF 2011**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

**IA NO: 1 OF 2015(ASMP 2299 OF 2015**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to exempt the petitioner / appellant from bringing the legal representatives of respondent No.5 and respondent No.9 on record in the appeal and pass

**IA NO: 1 OF 2017(ASMP 966 OF 2017**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased receive the additional grounds in the above appeal

**IA NO: 2 OF 2017(ASMP 1218 OF 2017**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased bring the following persons namely i. Tavva Srinivasa Rao, S/o.Suresh ii. Tavva Ganesh iii. Tavva Jagdeesh iv. Gamini Lakshmi Kali Kumari, W/o.Suresh Kumar v. Perumaklla Geeta, W/o.Perumalla Lakshmi Narayana vi. Gokavarapu Priya, W/o.Gokavarapu Lakshmi Narayana as legal representatives of the deceased 1st respondent namely Tavva suseela

**IA NO: 1 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to condone the delay of 2367 days in filing a petition to set

aside abatement that was caused for non impleadment of Legal Representatives of deceased sole Cross Objector in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 within the period of prescribed limitation and pass

**IA NO: 2 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to set aside abatement that was caused for non impleadment of Legal Representatives of deceased sole Cross Objector in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 within the period of prescribed limitation and pass

**IA NO: 3 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to permit the petitioners to come on record as Cross Objectors 2 to 7 being Legal Representatives of deceased sole Cross Objector in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 and pending interlocutory applications in the interests of justice and pass

**IA NO: 4 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to condone the delay of 688 days in filing the petition to set aside the abatement caused due to the death of the 3rd respondent and pass

**IA NO: 5 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to set aside the abatement caused due to the death of 3rd respondent and pass

**IA NO: 6 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to bring the following persons namely 1. Chakka Satyavathi W/o Late C. Prabhakara Rao Aged 62 years R/o D.No. 24 B-10-7, C/o Kola David Opp: Talugu Baptist Church Raghavachary Street, Pathebad, Eluru City Eluru District - 534 002 Chakka Veera Venkata Naga Satya Surya Rama Jagan Mohan Gupta, 35 years, Occ: Pvt. Employee C/o

Kola Devid, Opp: Telugu Baptist Church, Near D-Mart, Raghavachari Street, Pathebada, Eluru 3. Grandhi Venkata Naga Satya Surya Kalyani Veera Kanaka Durga Mahalakshmi W/o Siva Rama Krishna R/o 4-9, Ramalayam Street, Kannapuram, W.G. District 534 311 4. Dulipalla Roja Rani C/o Suman Kumar R/o 8-1-2, Tata Gudi Centre, Bhadrachalam Mandalam, Khammam District, Telangana 507 111 legal representatives of deceased 3rd respondent and pass

**IA NO: 7 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to condone the delay of 688 days in filing the petition to set aside the abatement caused due to the death of the 7th respondent and pass

**IA NO: 8 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to set aside the abatement caused due to the death of 7th respondent and pass

**IA NO: 9 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to bring the following persons namely Chimakurti Rama Sekhar S/o. Late Anjaneyulu, R/o. H.No.6D-6-20, Southern Street, Karanamgari Lane, Eluru, W.G.District as legal representatives of deceased 7th respondent and pass

**IA NO: 10 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to condone the delay of (649) days in filing a petition to set aside abatement that was caused for non impleadment of Legal Representatives of deceased 3 respondent in the Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 within the period of prescribed limitation and pass

**IA NO: 11 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to set aside abatement that was caused for non impleadment of Legal Representatives of deceased 3rd respondent in cross

Objections Sr.No. 6296 of 2004 in the main Appeal suit in AS.No. 3356 of 2003 within the period of prescribed limitation and pass

**IA NO: 12 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to permit the petitioners to bring on record as the proposed respondents 13 to 16 being Legal Representatives of deceased 3'"^ respondent in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 and pending interlocutory applications in the interests of justice and pass

**IA NO: 13 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to condone the delay of (9169) days in filing a petition to set aside abatement that was caused for non impleadment of Legal Representatives of deceased 5th respondent in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 within the period of prescribed limitation and pass

**IA NO: 14 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to set aside abatement that was caused for non impleadment of Legal Representatives of deceased 5th respondent in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 within the period of prescribed limitation and pass

**IA NO: 15 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to permit the petitioners to bring on record as the proposed respondents 17 and 18 being Legal Representatives of deceased 5th respondent in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 and pending interlocutory applications in the interests of justice and pass

**IA NO: 16 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to condone the delay of (649) days in filing a petition to set aside abatement that was caused for non impleadment of Legal

Representatives of deceased 7th respondent in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 within the period of prescribed limitation

**IA NO: 17 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to set aside abatement that was caused for non impleadment of Legal Representatives of deceased 7th respondent in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 within the period of prescribed limitation

**IA NO: 18 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to permit the petitioners to bring on record as the proposed 19th respondent being Legal Representative of deceased 7th respondent in Cross Objections Sr. No. 6296 of 2004 in the main Appeal Suit in AS No. 3356 of 2003 and pending interlocutory applications in the interests of justice

**IA NO: 1 OF 2025**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to receive the original endorsement dt. 24.5.2025 of the Secretary, Gram Panchayat Katheru filed with the counter and certified copy of extract of the Registrar of Birth and Deaths for the period September, 1998 to December, 1998 issued by Secretary Gram Panchayat, Katheru on 23.6.2025 filed along with additional counter by marking the same as Ex. B1 and B2 in the cross objection No. 6296 of 2004 and pass

**Counsel for the Appellant:**

1. ARAVALA SREENIVASA RAO

**Counsel for the Respondent(S):**

1. VINJAMURI RANGA BABU
2. NIMMAGADDA SATYANARAYANA
3. M V SURESH

**The Court made the following:**

**THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA**

**I.A.No.2 of 2004**
**(Cross-Objections (SR) No.6296 of 2004)**

**IN / AND**

**APPEAL SUIT No.3356 of 2003**

**COMMON JUDGMENT:** *(Per Hon'ble Sri Justice A. Hari Haranadha Sarma)*

**A. Introduction and Appearance of Parties:**

1. Defendant No.4 in the suit in O.S.No.221 of 1987 on the file of the learned Additional Senior Civil Judge, Eluru, West Godavari District, filed the present appeal questioning the decree and judgment, dated 16.12.2002 passed in the said suit.

2. One Tavva Suseela alias Venkata Suseela, arrayed as respondent No.1 in this appeal, is the plaintiff before the Trial Court. Consequent on the death of respondent No.1 herein (plaintiff), respondent Nos.13 to 18 are her legal representatives.

3. Originally, in the suit, there were 12 defendants. The other defendants are shown as respondent Nos.2 to 11 in the appeal. Consequent upon the death of respondent No.3 (defendant No.2), his legal representatives are added as respondent Nos.19 to 22.

4. Defendant No.5 / respondent No.5, Chakka Durgarao, died, but his legal representatives are not added.

5. Defendant No.7 / Chakka Lakshmi died and her legal representative is respondent No.23.

6. Respondent No.9 / Chunduri Rajeswari / defendant No.9 died and her legal representatives are not added.

7. Adding of legal representatives of respondent Nos.5 and 9 is exempted pursuant to the orders dated 30.12.2015 in A.S.M.P.No.2299 of 2015.

8. The suit in O.S.No.221 of 1987 was tried along with O.S.No.48 of 1994, renumbered from the original O.S.No.604 of 1987 on the file of the Principal Civil Judge, Junior Division, Eluru. Both cases i.e. O.S.No.221 of 1987 and O.S.No.48 of 1994 (new), O.S.No.604 of 1987 (old), were disposed together under a common judgment.

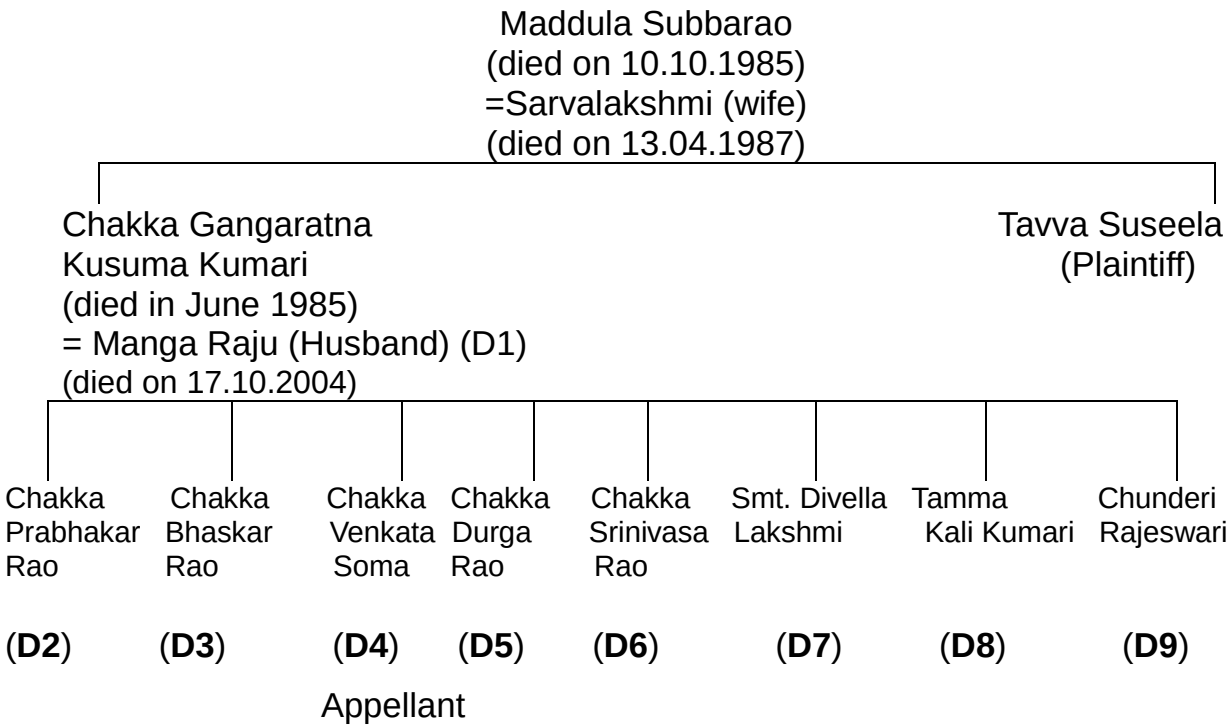
9. For the sake of convenience, the parties will be hereinafter referred to as with reference to their rankings in the trial Court.

10. The suit in O.S.No.221 of 1987 was filed for partition of properties described in ‘A’ and ‘B’ schedule properties and for recovery of possession of ‘C’ and ‘D’ schedule properties. The suit was partly decreed, declaring that, the plaintiff, defendant No.4 and the legal heirs of late Kusuma Kumari, eldest daughter of Subbarao and Sarvalakshmi (i.e. defendant Nos.2,3 and 6 to 8 together) are entitled to 1/3$^{rd}$ separate share in the plaint schedule ‘A’, ‘B’ and ‘C’ schedule properties and also for mesne profits. The rest of the suit claim is dismissed. No costs were awarded.

11. ‘A’-schedule and ‘C’-schedule properties are landed properties. ‘B’- and ‘D’-schedule properties are movable properties.

12. The suit in O.S.No.48 of 1994 was filed for grant of perpetual injunction in respect of the property described in the schedule in the said suit, which is a property measuring Ac.5.30 cents in Survey No.562, shown as item No.1 of 'A'-schedule in O.S.No.221 of 1987.

13. The genealogy of parties is as follows:




**B. <u>Case of plaintiff in O.S.No.221 of 1987:</u>**

14. Plaintiff's father Maddula Subba Rao died on 10.10.1985 and her mother Sarva Lakshmi died on 13.04.1987. Sister of the plaintiff, one Chakka Kusuma Kumari, predeceased her parents in the month of June, 1985, defendant No.1 is her husband. Defendant Nos.2 to 6 are sons and defendant Nos.7 to 9 are the daughters of defendant No.1 and Chakka Kusuma Kumari.

15. Maddula Subba Rao, father of the plaintiff, possessed 700 Sq.yards of site with tiled and terraced houses in Gundugolanu Village, West

Godavari District, which are described in 'A'-schedule properties. He was entitled for Rs.40,000/- dues from Sri Rama Fertilizers, Pesticides, Manures in Gundugolanu Village. Defendant No.4 is its proprietor and the movable properties are described in B-schedule.

16. The plaintiff got issued a notice dated 24.04.1986 to her mother Maddula Sarva Lakshmi and to defendant Nos.2 and 4 to 9, demanding partition of the properties of late Subbarao into three equal shares and possession and for payment of profits due to plaintiff to the extent of her 1/3rd share. By which time, defendant No.10 and one Penumatcha Satyanarayna Raju were the tenants. Subsequently, the said Penumatcha Satyanarayana Raju ceased to be a tenant. The notice sent to defendant No.4 returned unserved.

17. Maddala Sarvalakshmi died on 13.04.1987. She has executed a Will in favour of plaintiff on 29.03.1987 in a sound and disposing state of mind out of her free will at her parents' place when she went to attend to the annual ceremonies. Besides the properties of her husband, she possessed the immovable properties described in 'C'-schedule and the movable properties described in 'D'-schedule. Under the Will, Maddula Sarva Lakshmi bequeathed her joint 1/3$^{rd}$ share in the properties of her husband and her own properties to the plaintiff with absolute rights.

18. Plaintiff was also given over Ac.5.30 cents of lands in Gundugolanu, which was under the tenancy of defendant No.10. Accordingly, the plaintiff is in possession of item No.1 and defendant No.10 is her tenant.

19. Further, the case of plaintiff is that defendant No.4 was residing with Maddula Subbarao. After the death of Sarva Lakshmi, defendant No.1 published a pamphlet with false assertions that Maddula Venkata Sarvalakshmi had two daughters and one adopted son and that her elder daughter died on 28.06.1985 and that no Will was executed as claimed by the plaintiff. The assertion of defendant No.1 that there was adoption of defendant No.4 is incorrect. Defendant No.4 was just brought up for assistance and he is neither a son nor an adopted son and has no rights whatsoever. Somehow, defendant No.4 got into possession of Ac.7.74 cents of land and house property and other movable properties of Muddala Subbarao and also the jewellery of Sarva Lakshmi, except one under hypothecation to the bank. Some land is in possession of defendant No.11, tenant of Suvarna Lakshmi. The plaintiff is entitled to 2/3$^{rd}$ share. Defendant No.4 is liable to deliver the jewellery and properties. Defendant No.11 shall deliver the property. Defendant No.12, whose is in custody the hypothecated property, shall deliver the same to parties entitled.

20. It is further claimed by plaintiff that, the defendant No.1 sent a reply dated 24.06.1987 to the legal notice of the plaintiff dated 29.05.1987 with false allegations that, defendant No.4 was given in adoption to Maddula Subbarao on the arrangement of devolution of all the properties of Maddula Subbarao on defendant No.4 after his lifetime and also the lifetime of his wife. Accordingly, defendant No.4 was given in adoption on 06.03.1960. Defendant No.4 was married by Maddula Subbarao and his wife Maddula

Venkata Sarvalakshmi, executed a Will dated 08.04.1987 bequeathing her properties to defendant No.4. Hence, defendant No.4 alone has all the rights.

21. Further, the case of the plaintiff is that the Will relied on by the defendant dated 08.04.1987 is false and the Will dated 29.03.1987 in favour of the plaintiff is true and that the plaintiff and defendant Nos.2 to 9 are co-owners. They are entitled for the property. The properties are in joint possession. The plaintiff is entitled for two shares and defendant Nos.2 and 4 to 9 are entitled for 1/3$^{rd}$ share and also for accounting of the same. Defendant No.4 is bound to deliver the possession accordingly.

**C. <u>Case of defendant No.1:</u>**

22. The plaintiff's allegations are incorrect. Maddula Subbarao promised to give all his properties with absolute rights to defendant No.4. Defendant No.1 is the eldest son-in-law and being the parents, he and his wife gave defendant No.4 in adoption to Maddula Subbarao. Adoption taken place on 06.03.1960. The said M. Subbarao, the father of the plaintiff, being the adopted father, joined defendant No.4 in the school, referring to defendant No.4 as a son and performed the marriage of defendant No.4. All have attended the marriage. Maddula Venkata Sarvalakshmi, wife of Muddala Subbarao, executed a Will dated 08.04.1987 in a sound and disposing state of mind, bequeathing all her properties to defendant No.4. The plaintiff and her husband are fully aware of the same. The Will relied on by the plaintiff is invalid.

23. The written statement filed by defendant No.1 was adopted by defendant Nos.2,3 and 5 to 8.

24. Defendant No.4 filed a separate written statement.

**D. Case of defendant No.4:**

25. The case of defendant No.4, in brief, is that he was adopted by Maddula Subbarao and his wife, Venkata Sarvalakshmi. Defendant No.1 is his natural father. Adoption has taken place as per Sastras on 06.03.1960 at 09.36 a.m. Dattata Sweekara Patrika was also executed. Defendant No.4 was admitted to his school on 03.02.1964, referring to defendant No.4 as the son of Maddula Subbarao. The marriage of defendant No.4 was performed by Maddula Subbarao and his wife. The plaintiff and her husband have also attended the marriage function.

26. The allegations contra as to creation of Will, etc. are all false and in fact, the plaintiff has created the Will in her favour. His adopted mother Venkata Sarva Lakshmi executed the Will on 08.04.1987 in a sound and disposing state of mind, out of her free will, in his favour. The entitlement of the plaintiff to 2/3$^{rd}$ share in the property etc. are all false.

27. Defendant No.4 is entitled for all the properties of his adoptive parents. The plaintiff and other defendants are nothing to do with the properties. The Court fee paid is incorrect and the suit is liable to be dismissed.

**E. Case of defendant No.10:**

28. Plaintiff is one of the daughters of Subba Rao. The second daughter of Subba Rao died, leaving her husband (first defendant) and her sons and daughters i.e. defendant Nos.2 to 9.

29. Defendant No.10 taken the lands from the plaintiff under lease. He is continuing in possession as the tenant of the plaintiff. He is not in arrears of rent. He is the plaintiff in O.S.No.48 of 1994.

**F. Case of defendant No.12:**

30. The suit is not maintainable against defendant No.12-Bank and Bank is not a proper and necessary party. Defendant No.4 borrowed a sum of Rs.10,50,000/- on 19.02.1987 by pledging of one gold “Aravanki” weighing 109 grams for agricultural purposes. The loan was completely paid and the pledged article/ornament was released to the borrower.

**G. Suit in O.S.No.48 of 1994:**

31. Sri Maradani Krishna / defendant No.10 in O.S.No.221 of 1987 being the plaintiff in O.S.No.48 of 1994, claimed that defendant No.2 in the said suit i.e. Smt. Tavva Susila (plaintiff in O.S.No.221 of 1987) has leased out the property mentioned in the schedule to the plaint to him. Whereas, defendant No.1 in the said suit i.e. Chakka Venkata Somasekhar / defendant No.4 in O.S.No.221 of 1987 has no right but trying to interfere with the possession of the plaint schedule property. There is other litigation between the parties, filed by defendant No.2 in the said suit. In view of the threat to his possession, he is constrained to file the suit for injunction.

32. Defendant No.4 in O.S.No.221 of 1987, being defendant No.1 in O.S.No.48 of 1994, claimed that the allegations made in the plaint filed in the said suit are false. The suit is the result of collusion between the plaintiff and defendant No.2 in the suit and that the plaintiff therein is not entitled for any relief.

33. Defendant No.2 in the said suit viz. the plaintiff in O.S.No.221 of 1987 claimed that the plaintiff is the cultivating tenant of property leased out by defendant No.2 and that a legal notice was issued claiming rights and a suit O.S.No.221 of 1987 was also filed in which the plaintiff in O.S.No.48 of 1994 is defendant No.10.

**H. <u>Issues:</u>**

34 [i]. The Issues in O.S.No.221 of 1987 are as follows:

*1) Whether the 4th defendant is the adopted son of Maddula Subbarao and his wife Maddula Venkata Sarvalakshmi?*

*2) Whether the will dated 29.03.1987 is true, valid and executed by Sarvalakshmi in a sound and disposing state of mind?*

*3) Whether the will dated 08.04.1987 is true, valid and executed by Sarvalakshmi in a sound disposing state of mind?*

*4) Whether plaintiff is entitled for partition of plaint 'A' and 'B' schedule properties, if so, to what share?*

*5) Whether plaintiff is entitled for possession of plaint 'C' schedule properties?*

*6) Whether plaintiff is entitled for deliver of items 1 to 3, 5 and 6 of plaint 'D' schedule or their value from 4th defendant?*

*7) Whether plaintiff is entitled for delivery of item No.4 of 'D' schedule from 12th defendant?*

*8) Whether plaintiff is entitled for any mesne profits for 'C' schedule properties?*

*9) Whether 4th defendant or such other defendant found to be in possession of 'A' schedule properties is liable to render account to plaintiff? If so, to what period?*

*10) To what relief?*

[ii] The issues in O.S.No.48 of 1994 are as follows:

*1) Whether the plaintiff is entitled for permanent injunction as prayed for?*

*2) To what relief?*

**I. Trial:**

35. Evidence was recorded in O.S.No.221 of 1987 by clubbing the suit in O.S.No.48 of 1994, pursuant to a memo filed by defendant No.10 in O.S.No.221 of 1987 / plaintiff in O.S.No.48 of 1994.

36. The plaintiff and defendant No.4 in O.S.No.221 of 1987 are the defendants in O.S.No.48 of 1994. One M. Krishna, defendant No.10 in O.S.No.221 of 1987 is the plaintiff in O.S.No.48 of 1994. He is said to be the tenant in respect of land covered by item No.1 of plaint A-schedule.

37. The suit filed by defendant No.10 in O.S.No.221 of 1987 *vide* O.S.No.48 of 1994 suffered dismissal. It is not the case that, against such dismissal, any appeal was filed by the said M. Krishna.

**J. Findings and the relief granted by the Trial Court:**

38. Common judgment pronounced in respect of O.S.No.221 of 1987 and O.S.No.48 of 1994.

39. **[a] On adoption:**

[1] The core issue is relating to the status of defendant No.4, whether he is the adopted son or foster son of Subbarao and Sarvalakshmi. The evidence and the facts and circumstances indicate that Subbarao and Sarvalakshmi, are not having male issues, therefore taking a male issue in

adoption, particularly in the context of defendant No.1 already having three sons, including defendant No.4, is probable.

[2] The document, Ex.B2, would strengthen the plea of adoption. The absence of registration of that document is no ground to suspect adoption. The adoption of defendant No.4 by Subbarao and Sarvalakshmi, particularly in the context of they being the parents-in-law of D.W.1 is probable. Exs.B5 and B6, being the documents i.e. study certificates and transfer certificates issued by responsible authorities, are apparently genuine. The recitals in Ex.B4 also would show that defendant No.4 is the adopted son. There is no reason to suspect the adoption, particularly when the same is seen in the light of the wedding cards printed indicating the adoption. The arguments of the plaintiff that the name of Subbarao is shown in wedding cards since he is elderly person does not sound logical, particularly when he is shown as the adoptive father. Further, the adoption was also followed by formal invitations to some others. Therefore, the adoption is believed.

**[b] <u>On Will relied on by the Plaintiff:</u>**

40. [i] With regard to Ex.A12 Will relied on by the plaintiff, although the attestors and the scribe of the documents were examined, there are suspicious circumstances surrounding the Will.

[ii] The survey numbers were not mentioned in Ex.A12.

[iii] The extant mentioned therein is not correct.

[iv] The witness unable to state whether the testator, Sarvalakshmi, was literate or illiterate.

[v] Ex.A12 Will contains X-marks put underneath the draft and the signatures of the testator, Sarvalakshmi, are found against such X-markings.

[vi] It appears that, the document was prepared after taking the advantage of the signatures on the blank paper.

[vii] The attestors are neither related to Sarvalakshmi nor had previous acquaintance with her. When other relatives were present at the time of the ceremony of her brother, there was no need for the strangers to attest the document.

[viii] The evidence of P.W.4 is vague and untrustworthy, as he is not related to Veerraju and Sarvalakshmi and he does not know the plaintiff.

[ix] P.Ws.3 and 4 seems to be planted witnesses and merely lent their signatures. Prior to Ex.A12, Ex.A1 notice was issued by the plaintiff to her mother, which shows that there were differences between the plaintiff and her mother. Therefore, the cordial relationship to execute Will is doubtful. Hence, possibility of executing Ex.A12 is not there by the time of alleged Will.

[x] The plaintiff is not the sole legal heir. The execution of Ex.A12 by the testator, Sarvalakshmi, in favour of the plaintiff is highly doubtful in view of the suspicious circumstances. Hence, the Will is not believable.

**[c] With regard to the Will relied on by the Defendant:**

41. [i] D.W.5 is the witness who spoke about the handwriting of the scribe of Ex.B11-Will. The plaintiff got issued legal notice dated 29.05.1987-Ex.A13 and the returned cover-Ex.A22.

[ii] Defendant No.1 refused to receive the notice and he sent reply dated 24.06.1987-Ex.A26. The same was followed by Ex.A27, the reply of defendant No.4, dated 23.06.1987. In the pamphlets issued by defendant No.1, there is no mentioning about Ex.B11-Will. If Sarvalakshmi had executed a Will in favour of defendant No.4 under Ex.B11, nothing would prevent defendant No.1 or defendant No.4 from describing about the Will in pamphlet. Therefore, there is any amount of doubt against Ex.B11-Will.

[iii] The evidence in respect of Ex.A12 Will and Ex.B11 Will appears to be based on same errors. Defendant No.4 failed to secure admitted signatures of Sarvalakshmi for at least comparison in terms of Section 73 of the Evidence Act or to send the same under Section 45 of the Evidence Act to expert. When there is a categorical denial and an allegation of forgery and fabrication, defendant No.4 must prove the Will. The evidence touching upon Ex.B11 Will is vague and even the Will itself is vague. Therefore, the Will is not believable.

**[d] On Right to partition:**

42. [i] The plaint schedule properties belongs to Subbarao and Sarvalakshmi and they are their separate properties. Defendant No.4

claiming absolute ownership over A and B-schedule properties, relying on Ex.B11 as a settlement deed. This is not believable. Subbarao and Sarvalakshmi died intestate. In the absence of Will, the plaintiff, defendant No.4 and other legal heirs of Kusuma Kumari, the eldest daughter of Subbarao and Sarvalakshmi are entitled to 1/3rd share each.

[ii] There is no evidence to show that the jewellery of Sarvalakshmi was taken by defendant No.4. Taking of loan by defendant No.4 and Defendant No.12 advanced the loan on pledging of jewellery by defendant No.4 for agricultural purpose and on discharge, returned the jewellery was refund to defendant No.4 is the evidence. There is no positive evidence to show that the ornaments of Sarvalakshmi are taken by defendant No.4 illegally. Therefore, the plaintiff is not entitled for relief in that regard. Therefore, the plaintiff is entitled for partition of A, B and C-schedule properties to the extent of 1/3$^{rd}$ share. Since D.W.6 is not in possession of the suit schedule property prior to 1986, delivery of possession of item No.1 of the plaint schedule property by P.W.1 is not established.

**[e] <u>On Injunction relief in O.S.No.48 of 1994:</u>**

43. The agreement in favour of D.W.6 (plaintiff) in O.S.No.48 of 1994 does not inspire confidence and it appears to have been created to dispossess Defendant No.4 with the collusion. Defendant No.4 also gave Police complaint against D.W.6. Therefore, the oral evidence of D.W.6 is

not sufficient to grant relief and the suit in O.S.No.48 of 1994 is liable to be dismissed.

**K. Appeal:**

44. [i] Defendant No.4 is filed the appeal questioning the decree and judgment directing the division of A, B and C-schedule properties and granting decree and also granting decree in favour of the children of defendant No.1 contending that the unpleaded case is made out. The plaintiff filed the cross-objections.

[ii] The cross-objections are directed against the findings relating to the acceptance of the adoption and ignoring the Ex.A12-Will, relied on by the plaintiff.

**L. Arguments in the appeal:**

**[1] The grounds urged by defendant No.4 / appellant:**

45. [i] Having accepted the adoption of defendant No.4 and his entitlement to plaint A, B and C-schedule properties by virtue of Ex.B2, the Trial Court erred in ignoring the devolution of entire plaint A and B schedule properties upon Sarvalakshmi for her life time and thereafter to defendant No.4.

[ii] The Trial Court failed to see that Sarvalakshmi died having executed Ex.B11 Will dated 08.04.1987 bequeathing c-schedule properties which are her Sreedhana properties in favour of defendant No.4.

[iii] The Trial Court having disbelieved Ex.A12 Will erred in not believing Ex.B11 will relied on by the appellant.

[iv] The Trial Court erred in not considering the evidence of D.Ws.3 and 4 the attestors of will Ex.B11 and D.W.5, who identified the signatures of scribe of Ex.B11. The Trial Court ought to have seen there is reference to legal notice in Ex.B11 will and ought to have found that under Ex.B11 Sarvalakshmi bequeathed her testators sreedhan properties.

[v] The Trial Court ought to have seen that there is no need for testator Sarvalakshmi to execute will in respect of A, and B schedule properties as the testators was possessing life interest only.

[vi] The Trial Court failed to see that other defendants categorically stated that they have nothing to do with the properties of late Subbarao and his wife. Therefore, erred in granting decree in favour of children of defendant No.1 which is making out a new case which is not pleaded by defendant Nos.2,3, 5 to 7.

[vii] Defendant No.5 died during pendency of the suit but the legal representative of defendant no.5 are not added and not adding such legal representatives vitiates the legal proceedings particularly suit for partition for partition and decree passed is nullity. Therefore, the decree is liable to be set aside.

**(2) <u>The grounds urged in the cross objections by the respondents/ plaintiff:</u>**

46. [i] The Trial Court erred in believing the adoption, although there are suspicious circumstances.

[ii] The Trial Court erred in ignoring the aspect that Ex.B2 is compulsory registrable and inadmissable for want of registration and stamp duty.

[iii] Trial Court erred in giving undue weightage to Exs.B3, B4, B7 and B10 and invitation cards, which can be easily manipulated.

[iv] The Trial Court erred in giving credence to Exs.B5 and B6 documents and coming to conclusion that Defendant No.4 is adopted son of late Subbarao and ought to have found that defendant No.4 is only brought up by late Subbarao.

[v] Defendant No.4 failed to establish the adoption by way of registered document or by way of adducing evidence to prove the adoption and officiating rituals as per Sastras. But the trial court erroneously accepted the adoption.

[vi] The Trial court erred in discarding Ex.A12 Will in spite of evidence of P.Ws.2 to 4 proving the Ex.A12 Will in one voice.

[vii] The reasoning that P.Ws.3 and 4 are not relatives for not accepting Ex.A12 is erroneous and its testatrix in her wisdom might have chosen the persons who are not related to avoid complications. This important side of the arguments is ignored when the will Ex.A12 is proved as required by law under Section 63 of the Indian Succession Act.

47. Perused the record. Thoughtful consideration is given to the arguments advanced by both sides.

**M. <u>The points that arise for determination in this appeal are:</u>**

48. (1) Whether the adoption of defendant No.4 is true, valid and binding on the plaintiff and whether the adoption deed-Ex.B2 is having a characteristic of settlement deed conferring exclusive rights in respect of all the properties of late Subbarao and his wife, Sarvalakshmi, in favour of defendant No.4?

(2) Whether the Will-Ex.A12 relied on by the plaintiff is true, valid and binding on the defendants?

(3) Whether the Will-Ex.B11 relied on by defendant No.4 is true, valid and binding on the plaintiff?

(4) Whether the suit becomes abated as a whole for the reason of non-inclusion of the legal representatives of defendant No.5 and whether the decree under challenge in the appeal is a nullity on that ground?

(5) Whether the plaintiff or her legal representatives are entitled for partition and separate possession in respect of the plaint A, B, and C schedule properties and if so, to what share?

(6) Whether the decree and judgment dated 16.12.2002 passed in O.S.No.221 of 1987 are sustainable in law and on facts or whether require any interference and if so, on what grounds and to which extent?

(7) What is the result of the cross-objections?

(8) What is the result of the appeal?

**Point No.1:**

49. Defendant No.4 is the son of defendant No.1. The wife of defendant No.1 is the daughter of Maddula Subbarao and Sarvalakshmi. The said Maddula Subba Rao and Sarvalakshmi had no male children. The deed of adoption-Ex.B2 is relied on by defendant No.4 to prove the adoption. Ex.B2 is dated 06.03.1960 and the same was preceded by the invitation-Ex.B1 dated 02.03.1960. Further, an invitation-Ex.B3 dated 24.01.1964 was got printed by Maddula Subbarao, informing that there will be an Aksharabhyasam (first letter ceremony) of his adopted son. Likewise, invitation cards for the wedding at defendant No.4 were also got printed by the adoptive parents. Even the Transfer Certificate-Ex.B6 is indicating the name of Maddula Subbarao as the father of defendant No.4. Ex.B7-information card published for the annual ceremony of Maddula Subbarao is in the name of defendant No.4.

50. During cross-examination, P.W.1 admitted that, since childhood, defendant No.4 was brought up in the house of her parents. Defendant No.1 and his wife, who is the sister of P.W.1, resided at Gundugolanu and parents of P.W.1 are permanent residents of Gundugolanu. Her parents performed the marriage of defendant No.4 at Kallacheruvu. The parents of defendant No.4 left the boy (defendant No.4) in childhood, when he was one or two years old and since then, the parents of P.W.1 brought him up. Since then, the parents of defendant No.4 did not take care of him. The wedding cards of defendant No.4 shown to P.W.1 were got printed by her

father. P.W.1 and her husband attended the marriage of defendant No.4 at Kallacheruvu. Her parents presented a gold Mangalasutram chain and Aravanki to the wife of defendant No.4 at the time of the marriage. Her mother presented a pair of slides to the wife of defendant No.4 at the time of the marriage. Defendant No.4 performed the obsequies of her father. Defendant No.4 sent a printed invitation card for the Gruhapravesam to her, but she did not attend as there were no talking terms. Defendant No.4 printed invitation card for the first annual ceremony of her father and she received one such card and attended the annual ceremony. Her father got admitted defendant No.4 in the school. She do not know whether her father was shown as the father of defendant No.4 in the school records at Gundugolanu and that the defendant No.4 is shown as the son of Maddula Subbarao in the college records also.

51. Defendant No.1, as D.W.1, categorically stated about the adoption of defendant No.4 into the family of Maddula Subbarao. He has stated about the presence of some guests, the purohit etc. and that one Narasimha Murthy of Gundugolanu is the family purohit of his father-in-law.

52. D.W.2 is defendant No.4. He has stated about the adoption and the adoption deed and also other details as to his adoptive parents bringing him up, including performing his marriage and performing the obsequies of Maddula Subbarao. D.W.4 is one Maddula Parameswarao, the brother of Maddula Subbarao. He has stated that defendant No.4 is the adopted son.

53. In view of the admissions of P.W.1 stated above, the documentary evidence covered by Exs.B1 to B7, coupled with the assertions and evidence of D.Ws.1 and 2, which remained unshaken even after cross-examination. It is found that the adoption of defendant No.4 is true, valid and binding on the plaintiff.

54. The next aspect that remains for consideration is whether the adoption deed is having characteristic of settlement deed conferring exclusive and total rights upon defendant No.4 in respect of all the properties. Learned counsel for defendant No.4 / appellant herein relied on the recitals in the adoption deed that it is a settlement deed as well. Therefore, all the properties of adoptive parents viz. Maddula Subbarao and his wife, shall devolve upon defendant No.4 alone. In this context, this Court finds it proper to extract the relevant part of the adoption deed, which reads as follows:

> నా పెద్దల్లుడయిన గుండుగొలను గ్రమా కాపురస్తులు చక్కా మంగరాజు గారి తృతీయ కుమారు వెంకట నాగ సర్వ సోమ శేఖర్ అనే నిన్ను నేను యీ రోజున యధా శాస్త్రీయ ముగా మహాజన సమక్షమున మాదంపతులము ఇద్ధరము నిన్ను దత్త పుత్రనిగా మీ తల్లి తండ్రులు అనుమతి మీదను యీ రోజున స్వీకరించి శాస్త్రోక్తముగా హెూమాది క్రయలతో దత్తత స్వీకారం చేసుకొన్నాము గనుక యింతటి నుంచి నా తాలూకా యావత్తు స్థిర చరాస్తులకు హూసు పుత్రనికి గల అన్ని హక్కులను నీవు కళ్ళి మా వుభయుల అనంతరం లా ప్రకారం నా తాలుకా యావత్తు స్థిరచరాస్తులకు నీవు కర్తవయి సంపూర్ణ అధికారములతో స్వేచ్చగా నీ పుత్రపావుత్రపారం పర్యా ఆచందోర్కముగా వంశానుక్రమణికముగా ధాన ధమన వినిమయ విక్రయ సత్త సమగ్ర అధికారములతో నీవు అనుభవించుటకు న్నూ నా వంశము వృద్ధి పర్చుటకున్నూ మా దంపతుల ఇద్ధరమూ అనంతరా వుత్తర క్రయలు వగైరా కర్మలు శాస్త్రోక్తముగా యధావిధిగా జర్పుటకున్నూ నిన్ను నియమించి యీ దత్తత స్వీకార పత్రక మూలముగా నీకు అన్ని విధముయిన అధికారములు కలుగచేయుటమయినది.

55. The argument of learned counsel for defendant No.4 is that defendant No.4 was conferred with all rights. In this regard, he has referred to the specific words "హూసు పుత్రనికి గల అన్ని హక్కులను నీవు కల్గి మా వుభయుల అనంతరం లా ప్రకారం నా తాలుకా యావత్తు స్థిరచరాస్తులకు నీవు కర్తవయి సంపూర్ణ అధికారములతో స్వేచ్ఛగా నీ పుత్రపావుత్రపారం పర్యా ఆచందోర్కముగా వంశానుక్రమణికముగా ధాన ధమన వినిమయ విక్రయ సత్త సమగ్ర అధికారములతో నీవు అనుభవించుటకు....."

56. In this context, it is relevant to note that the language in Ex.B2-adoption deed is intended to confer the right of defendant No.4 on par with and as good as a regular/natural son and that the defendant No.4 can act as fully responsible son without any fear or hesitation etc. and that the properties shall devolve after the demise of the adoptive parents as per law. The specific use of the word 'లా' (law) in Ex.B2, the document relied upon by the defendant No.4, would suggest that the rights of defendant No.4 are as per law, but not total rights as the defendant No.4 contends. Getting a legal status as a son is different from getting the properties under a document. The language in Ex.B2 is not sufficient to consider that it is a settlement deed conferring all rights.

57. The next objection of the plaintiff is that the adoption deed is registrable. For want of registration, Ex.B2 cannot be relied on. As regards the proposition of law as to whether the adoption deed is compulsory registrable document, this Court finds it proper to refer to the observations of the Hon'ble Apex Court made in a case between ***Param Pal Singh***

***Through Father vs. National Insurance Company and Another***[1] vide para Nos.12 to 15, which read as follows:

> ***12.*** *In Hindu law in the celebrated decision of this Court in Lakshman Singh Kothari [AIR 1961 SC 1378] , the legal requirement for a valid adoption has been succinctly stated in para 10 which reads as under: (AIR p. 1381)*
>
> > *"10. The law may be briefly stated thus: Under the Hindu law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party."*
>
> ***13.*** *The said legal position has been consistently followed by this Court which can be mentioned by referring to a recent decision of this Court in M. Gurudas v. Rasaranjan [(2006) 8 SCC 367] . Paras 26 and 27 are relevant for our purpose which read as under: (SCC pp. 377-78)*
>
> > *"26. To prove valid adoption, it would be necessary to bring on record that there had been an actual giving and taking ceremony. Performance of 'datta homam' was imperative, subject to just exceptions. Above all, as noticed hereinbefore, the question would arise as to whether adoption of a daughter was permissible in law.*
> >
> > *27. In Mulla's Principles of Hindu Law, 17th Edn., p. 710, it is stated:*
> >
> > > *'488. Ceremonies relating to adoption.—(1) The ceremonies relating to an adoption are—*
> > >
> > > *(a) the physical act of giving and receiving, with intent to transfer the boy from one family into another;*
> > >
> > > *(b) the datta homam, that is, oblations of clarified butter to fire; and*
> > >
> > > *(c) other minor ceremonies, such as putresti jag (sacrifice for male issue).*

[1] (2013) 3 SCC 409

> *(2) The physical act of giving and receiving is essential to the validity of an adoption.*
>
> *As to datta homam it is not settled whether its performance is essential to the validity of an adoption in every case.*
>
> *As to the other ceremonies, their performance is not necessary to the validity of an adoption.*
>
> *(3) No religious ceremonies, not even datta homam, are necessary in the case of Shudras. Nor are religious ceremonies necessary amongst Jains or in the Punjab.'"*

> ***14.*** *In this context, it will be worthwhile to note the requirement of registration of an adoption deed. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents mentioned in sub-section (1) of Section 17 which mandatorily requires registration. Sub-section (3) of Section 17 only refers to the mandatory requirement of registration of an authorisation that may be given for adopting a son executed after 1-1-1872 if such authorisation was not conferred by a will. Dealing with the said provision relating to authorisation, it has been held in the decision in Vishvanath Ramji Karale v. Rahibai Ramji Karale [AIR 1931 Bom 105] that a deed of adoption as distinguished from authority to adopt does not require registration.*

> ***15.*** *Keeping the above statement of law in mind as regards the procedure to be followed for a valid adoption and the statutory stipulation that an adoption deed does not require registration, the claim of the appellant as the adopted son of the deceased requires to be considered.....*

58. In view of the discussion made above and in the light of the observations of the Hon'ble Apex Court in ***Param Pal Singh Through Father vs. National Insurance Company and Another*** (1 supra), the point framed is answered concluding that the adoption of defendant No.4 as the adopted son of Maddula Subbarao and Sarvalakshmi is true, valid and binding on the plaintiff. However, the document Ex.B2 is not having characteristic of settlement deed conferring exclusive rights upon defendant No.4 in respect of all the properties. The findings of the Trial Court are fit to be confirmed to this extent.

59. Before adverting to the discussion on point Nos.2 and 3 relating to the proof or otherwise of the Wills, this Court finds it proper to refer to the jurisprudence on Wills, with reference to statutory and precedential guidance:

**Statutory Guidance:**

60. [i] Section 63 of Indian Succession Act, 1925 reads as follows:

> ***Section 63: Execution of Unprivileged Wills***
>
> *Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:—*
>
> *(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.*
>
> *(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.*
>
> *(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.*

[ii] Section 68 of the Indian Evidence Act, 1872, reads as follows:

> ***Section 68 – Proof of execution of document required by law to be attested.***
>
> *If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*
>
> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian*

*Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.*

**Precedential Guidance:**

61. [i] The Hon'ble Apex Court in ***Leela and others vs. Muruganantham and Others[2],*** vide para Nos.16 and 17, observed as follows:

***16.*** *We are of the considered view that the fate of this appeal depends upon the decision on the genuineness and the question whether the suspicious circumstances are removed/explained to the satisfaction of this Court. The will is executed on the stamp papers bought in the name of Petitioner 1, who was examined as DW 1. Still, DW 1 categorically denied the case of having played a role in the execution of the said will. Before looking into the alleged and upheld suspicious circumstances, it is only apposite to refer to the settled position that though it is the propounder to establish the execution of the will and once the same is discharged, it is for the objector to pinpoint the suspicious circumstances. It is also the settled position that upon such objection, it is for the propounder to remove such suspicious circumstances. [See the decision of this Court in Derek A.C. Lobo v. Ulric M.A. Lobo [Derek A.C. Lobo v. Ulric M.A. Lobo, (2024) 15 SCC 202 : 2023 SCC OnLine SC 1893 : 2023 INSC 1093] , in which one among us (C.T. Ravikumar, J.) is a party.]*

***17.*** *Now, we will refer to the suspicious circumstances pointed out by the courts below:*

*(i) That the first appellant (DW 1) one of the beneficiaries and the mother of the other beneficiaries played active role in the execution of the will in question and concealed this fact before the Court;*

*(ii) Contradictory recitals on the health of the testator in the will and the evidence of DW 1 herself strengthening the same;*

*(iii) Non-matching of the signature of the testator in Ext. A-1, partition deed and Ext. B-2, will dated 6-4-1990;*

*(iv) Non-examination of the person who typed the will;*

*(v) Non-examination of the scribe;*

*(vi) Incongruity with respect to the place of execution of the will;*

*(vii) Failure to prove that the testator executed the will after understanding its contents.*

[2] 2025 (4) SCC 289

[ii] The Hon'ble Apex Court in ***Lakshmi vs. Gopi and Others***[3]**,** vide para No.11, observed as follows:

> ***11.*** *In this context let us deal, albeit briefly, with what a Court is required to do when it is confronted with the question of genuineness of the Will. It has to be proved like any other document except for additional requirements under ISA. To restate, the Civil Court had refused to accept the Will and the High Court as the First Appellate Court was to decide on both questions of fact and law. The requirements below are in the light of Section 67, 68 of the Evidence Act, 1872*[25] *and Section(s) 59 and 63 of ISA.*
>
> *(1) Since the proving of the \Will is necessarily an event after the death of the testator there is a certain level of sanctity that is attached to the same;*
> *(2) If the will has been signed by the testator, the same has to be established according to Section 67 IEA with recourse to Section 45 and 47 thereof, if required;*
> *(3) The will in order for it to be proved to be the last will of testator, has to be attested in accordance with Section 63 ISA either by signing/affixing his mark or signed by a third party upon his direction and in his presence in which situation not one but two attesting witnesses would be required to be examined;*
> *(4) The testator must be of sound mind within the meaning of Section 59 of ISA and it has to be proved accordingly;*
> *(5) At least one attesting witness has to be examined in court to prove its execution;*
> *(6) Three questions need to be asked by the Court and the answer so produced should be to the satisfaction of a prudent mind. Mathematical precision is not to be looked for. They are:* ***(a)*** *has the testator signed the Will?;* ***(b)*** *Did he/she understand the nature? ; and* ***(c)*** *the effect of the dispositions in the Will; and* ***(d)*** *Did he/she put his/her signature on the Will knowing what it contained?*

[iii] The Hon'ble Apex Court in ***Sardari Lal vs. Bishan Dass and Others***[4]**,** vide para Nos.27 to 30, 32 and 38, observed as follows:

> ***Law regarding proof of Wills***
> ***27.*** *In Rani Purnima Debi (supra), a three-Judge Bench of this Court, after considering another three-Judge Bench decision rendered in H.*

[3] 2026 SCC OnLine SC 1338

[4] 2026 SCC OnLine SC 1266

*Venkatachala Iyengar (supra), summarized the law as under: The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act, and its mode of proof as prescribed in Section 68 of the Indian Evidence Act, 1872[22]. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus. Where, however, there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the Will could be accepted as genuine. If the caveator alleges undue influence, fraud or coercion, the onus is on him to prove the same. Even where there are no such pleas, but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances might be as to: (a) the alleged signature of the testator; (b) the condition of the testator's mind; (c) the dispositions made in the Will, which may appear unnatural, improbable or unfair in the light of relevant circumstances; or the Will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind; and (d) the propounder taking a prominent part in the execution of the Will which confers substantial benefits upon him. If the propounder succeeds in removing the suspicious circumstances, the court would grant probate, even if the will might be unnatural and might cut off, wholly or in part, near relations[23].*

***28.*** *In Smt Jaswant Kaur v. Smt. Amrit Kaur[24], a three-Judge Bench decision of this Court, it was held:*

> *"9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."*

***29.*** *In Kalyan Singh, London Trained Cutter, Johri Bazar, Jaipur v. Smt. Chhoti[25], a three-Judge Bench of this Court held:*

> *"20. …a will is one of the most solemn documents known to law. The executant of the will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the court to establish genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by*

*considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanor. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also open to the court to look into surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party."*

*(Emphasis supplied)*

***What could be considered 'suspicious circumstance'***

***30.*** *Elaborating upon as to what could be considered 'suspicious circumstance' in the context of a will, in Shivakumar (supra), a three-Judge Bench of this Court held:*

*"12.6. A circumstance is "suspicious" when it is not normal or is "not normally expected in a normal situation or is not expected of a normal person". As put by this Court, the suspicious features must be "real, germane and valid" and not merely the "fantasy of the doubting mind".*

*12.7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependents; an active or leading part in making of the will by the beneficiary thereunder etcetera are some of the circumstances which may give rise to suspicion. These circumstances above noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to a legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof and sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.*

*12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding nature and effect of the dispositions in the will.*

*12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding will."*

***32.*** *Survey of judicial precedents makes it clear that the burden to prove the Will lies on its propounder. Besides, the exercise of proving the Will is not confined to proving its execution in terms of Section 63 of the Succession Act by the mode prescribed by Section 68 of the Evidence Act. This is just the first step in that exercise. The exercise is complete when the propounder satisfies the Court's conscience that the testator had signed the Will with free will, being aware of its contents, and after understanding the nature and effect of the dispositions in the Will. And, if there are suspicious circumstances raising doubts about the Will, it is the duty of the propounder to explain those suspicious circumstances to dispel the doubts and satisfy the Court's conscience. As to what would be considered a 'suspicious circumstance' depends on the facts and circumstances of each case. Broadly, any circumstance, or set of circumstances, which gives rise to a legitimate suspicion about the valid execution of the Will could be considered a suspicious circumstance. However, those suspicions must not be a figment of imagination or fantasy of a doubting mind.*

***38.*** *Proof of will is not just an exercise to prove the signature of the testator on the Will and its attestation in terms of Section 63 of the Succession Act; rather it is an exercise to satisfy the Court's conscience that the testator had signed the Will with free will being aware of its contents and after understanding the nature and effect of the dispositions in the Will. Where there are suspicious circumstances regarding the execution of the Will, the propounder must explain those circumstances and dispel all reasonable doubts regarding its execution. Judicial pronouncements have left the phrase 'suspicious circumstances' open-ended so as to encompass any circumstance which creates doubt about the Will being expression of the free will of the testator, though it would not include a figment of imagination or fantasy of a doubting mind. Such doubt may arise from a shaky or doubtful signature of the testator; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs, particularly the dependents; active or leading part played by the beneficiary in making of the will etcetera.*

**Point No.2:**

62. The law relating to Will and reliability of Will is clear that it shall be proved as required under Section 68 of the Evidence Act and Section 63 of the Indian Succession Act. Further, all the suspicious circumstances surrounding the Will shall be dispelled.

63. The plaintiff is relying on Ex.A12-Will dated 29.03.1987, which is an unregistered document. As per the plaintiff's own pleadings and evidence as P.W.1, including admissions during cross-examination, she has got issued legal notice to her mother demanding a share in the properties and the same was preceded by oral demands. From the conduct of the plaintiff, P.W.1 that she has got issued legal notice prior to Ex.A12, there remains any amount of doubt as to whether Ex.A12-Will was executed by mother of plaintiff in such a strange situation. Further, it is relevant to note that the plaintiff, as P.W.1, during her cross-examination dated 06.07.1998, made the following admissions:

(i) She cannot say the time of execution of Will.

(ii) The Will was prepared by the scribe to the dictation of her mother.

(iii) No documents were shown to the scribe by her mother while drafting Ex.A12

(iv) The testator did not note the survey numbers of land on a bit of paper to give it to scribe.

(v) The survey numbers of lands are not mentioned in Ex.A12.

(vi) No draft of Ex.A12 was prepared.

(vii) Registration of Ex.A12 was contemplated, but meanwhile, the testator died within 10 to 15 days of Ex.A12.

(viii) The attestors are not related to the family.

(ix) P.W.1 do not know whether her mother is studied.

(x) P.W.1 cannot say how many times her mother (testator) signed on Ex.A12.

(xi) She cannot say whether her mother signed with the same pen that was used for scribing Ex.A12.

(xii) She cannot remember whether the attestor used the same pen that was used by the scribe.

64. It is also relevant to note that P.W.2, the scribe of Ex.A12, deposed that the Will was executed when the testator came to Kovvali village to attend the obsequies of her brother. The attestors were present during execution. During cross-examination, he has stated that he is not a licenced document writer. He did not write any other documents pertaining to testator except Ex.A12. The testator called him to write Ex.A12. He do not remember through whoom he was called. He knows the husband of the plaintiff. At the time of preparing Ex.A12, he asked the testator whether any documents are available with her, but she stated that no documents are available. He do not know whether the testator is a literate or illiterate. He did not prepare any draft but noted the points for drafting Ex.A12. He did not know whether the attestors are related to the testator.

65. P.W.3 is another witness to Ex.A12. During cross-examination, he has stated that the testator is not permanent resident of Kovvali. He belongs to kovvali. The family members of one veerraju invited him for lunch in connection with the obsequies of Veerraju. He knows the husband of plaintiff and the plaintiff and her husband also came to the house of

Veerraju in connection with obsequies of veeraraju. He did not remember at how many places the testator signed on Ex.A12 or how many signatures she made on Ex.A12. He did not remember how may pages Ex.A12 was drafted. He do not remember whether Ex.A12 was drafted on white paper or a ruled paper.

66. P.W.4 is another witness to Ex.A12. His evidence during cross examination is that he is not a relative to Veerraju. P.W.3 is also not a relative. He and P.W.3 were called for lunch on the day of obsequies. He cannot say whether the plaintiff came to Kovvalli Village on that day or not. He came to the Court for the first time in his life and Ex.A12 was the first document attested by him. He got acquaintance with P.W.2 since his childhood. He do not know the contents of Ex.A12. He do not know to whom the properties were bequeathed or by whom the properties were bequeathed.

67. A close reading of evidence of P.Ws.2 to 4 coupled with certain admissions of P.W.1 including the legal notice got issued by P.W.1 to the testator demanding partition of properties would create any amount of suspicion as to the necessity and truthfulness of the execution of Ex.A12 document by the testator.

68. The suspicious circumstances surrounding the Will-Ex.A12 are:

(i) There are other natural heirs.

(ii) There is an adopted son, defendant No.4.

(iii) The testator went to her parental house to attend the obsequies of her brother. At that time and at that place, opting to execution of a Will preferring one of the successors over the others is highly uncommon, particularly when the same is seen in the light of gap between the parties and the legal notice.

69. In view of the above discussion, it is concluded that the plaintiff failed to prove the truth, validity and binding nature of Ex.A12 on the defendants. The point framed is, therefore, answered accordingly against the plaintiff.

**Point No.3:**

70. Like Ex.A12, Ex.B11 is also an unregistered Will. Apart from D.W.2, defendant No.4, D.Ws.3 and 4 are the attestors to Ex.B11 and D.W.5 is the witness examined to show the hand writing of the scribe of Ex.B11. As per evidence of D.W.3, he and one Parameswara Rao attested Ex.B11. The details are furnished by the testator, Sarvalakshmi, to the document writer for drafting Ex.B11.

71. During cross-examination, D.W.3 stated that defendant No.4 is his son-in-law. He do not know the intention of testator to execute Ex.B11. The testators are not having ill health by that date. He do not remember who sent a word for Parameswara Rao, the other witness. He do not remember whether defendant No.1 informed him that plaintiff got issued legal notice issued to him or not. No such reference is made in Ex.B11-Will. Again, he has stated that he do not remember the same. He did not know whether

the testator executed any other will prior to Ex.B11. He do not know whether the testator, Sarvalakshmi, has executed a Will bequeathing her property and her 1/3rd share in the property of M. Subbarao to P.W.1.

72. D.W.4 / Maddula Parameswararao deposed that Maddula Subbarao is the elder brother of his father. He has attested the document as the second attestor. D.W.3 is the first attestor. During cross-examination, he has stated that he do not know personally about adoption of defendant No.4. He has also stated that there was enmity between the Sarvalakshmi and P.W.1 since the date of issuance of the legal notice by P.W.1.

73. In the Will-Ex.B11 dated 08.04.1987, there is a clear reference to the legal notice dated 29.05.1987 got issued by the plaintiff. Neither the evidence of D.W.3 nor the recitals in the Will would reflect that the Ex.B11-Will was executed in anticipation of uncertainty of life due to some ill health etc. The attention of D.W.3 drawn to the health condition of testator and he has stated that testator was not suffering from any ill health like B.P. etc. He has also stated that he do not remember about any legal notice got issued by the plaintiff. The Will relied on by the plaintiff, Ex.A12, is dated 29.03.1987. The Will-Ex.B11 relied on by the defendant is dated 08.04.1987. The legal notice issued by the plaintiff is dated 29.05.1987. The sequence of all these things, when seen in the light of the evidence of the witnesses, the contention of defendant No.4 that Sarvalakshmi executed the Will, suffers from any amount of doubt and it can be concluded that the defendant failed to prove the Ex.B11- Will, as rightly observed by the Trial

Court. Both the plaintiff and the defendant failed to prove the respective Wills, Ex.A12 and Ex.B11 and the findings of the learned Trial Court does not require any different view on the said aspect. Therefore, point No.3 is answered concluding that the defendant No.4 failed to prove Ex.B11-Will and its binding nature on the plaintiff.

**Point No.4:**

74. For the proposition as to nullity of the decree, Sri Aravala Sreenivasa Rao, the learned counsel for appellant relied on the observations of the Hon'ble Apex Court made in the following judgments:

[i] ***Gurnam Singh (dead) Through Legal representatives and others vs. Gurubachan Kaur (Dead) by Legal Representatives***[5], wherein it was found that failure to bring the legal representatives of the deceased parties on record within the stipulated time resulting abatement of the proceedings and any decision in favour of or against the such deceased persons would render the decree a nullity. It was a case of contract to sell the suit schedule land and the same has led to filing of the civil suit by a purchaser against the vendor and subsequent purchasers for specific performance. The Trial Court dismissed the suit for specific performance but granted a money decree. During the pendency of the appeal, the appellant died. In that context, when two respondents died during the pendency of the Second Appeal, no steps are taken within the time, the abatement was not recorded and it was observed that the appeal could

[5] (2017) 13 SCC 414

have been taken up for hearing only after the adding of the legal representatives on record. Incidentally, an observation was also made as to passing of decree without jurisdiction and its nature.

[ii] ***State of Punjab vs. Nathu Ram***[6], it was case of acquisition of land by the Government for military purposes etc., payment of compensation and non-inclusion of legal representatives.

[iii] ***Budh Ram and others vs. Bansi and Others***[7]**,** it was case of declaration of title and injunction, wherein certain legal representatives of the respondents are not added in the appeal. The principal of automatic abatement in the event of non-inclusion of the necessary legal representatives was observed.

[iv] ***Kanakarathanammal vs. Loganatha Mudaliar and Another***[8]**,** which was a suit filed for recovery of possession, wherein two brothers were not impleaded in a case where the appellant claimed rights through her mother in terms of Section 12 of the Hindu Succession Act while considering the nature and character of the partition and where the appellant is entitled to claim along with others, but the plaintiff failed to implead the co-heirs were found as necessary parties.

[v] ***A. Ramachandra Pillai vs. Valliammal (died)***[9]**,** wherein it was observed by the Division bench of the Hon'ble Madras High Court that in a suit for general partition, no doubt, all the sharers are the necessary parties.

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[6] AIR 1963 SC 89
[7] (2010) 11 SCC 476
[8] 1963 SCC OnLine SC 154
[9] Appeal No.776 of 1977 and C.M.P.No.2610 of 1982, dated 01.03.1983

These judgments are not found applicable to the facts and context of the present case.

75. [i] Per contra learned counsel for respondents relied on ***Sardar Amarjit Singh Kalra (dead) by L.Rs and others vs. Pramod Gupta (SMT) (dead) by LRs and Others***[10], wherein the proposition relied on by the appellant in ***Nathu Ram*** case was also considered in para 19 of the judgment and the distinction between the joint and individual decrees and the existence of joint rights, as distinguished from tenancy-in-common was considered observed in para Nos.19 to 21 and finally, para Nos.26 and 30 to 34, found relevant which are as follows:

> ***19.*** *A reference to the case-law on which strong reliance was placed by either side becomes essential, before adverting to the relevance and applicability or otherwise of the principles laid down therein to the points arising for consideration in these appeals. The earliest of the series, which came to be noticed, followed and distinguished in several subsequent decisions is the one in Nathu Ram case [AIR 1962 SC 89 : (1962) 2 SCR 636] . The relevant facts necessary to appreciate the principle laid down therein are, that the Punjab Government acquired on lease certain parcels of land belonging to Labhu Ram and Nathu Ram for military purposes under the Defence of India Act, 1939. The brothers refused to accept the compensation offered and applied for reference to an arbitrator who passed an award ordering the payment of an amount higher than what was offered by the Collector and further directed the payment of certain amount on account of income tax which would be paid on the compensation received. An appeal was filed by the State Government before the High Court and during the pendency of the appeal, Labhu Ram, one of the respondents, died. The High Court, while holding the appeal to have abated as against Labhu Ram, further held its effect to be the dismissal of the appeal against Nathu Ram also. The cross-objections also were dismissed. On a certificate being granted, the matter came up on appeal before this Court. This Court*

[10] (2003) 3 SCC 272

*while adverting to Order 22 Rule 4 CPC, observed that the Code does not provide for the abatement of the appeal against the other respondents, though courts at times have held that in certain circumstances, the appeals against the co-respondents would also abate, as a result of the abatement of the appeal against the deceased respondent. Indicating that it would be incorrect to state that the appeal abated in such circumstances, this Court observed that the appeal in certain circumstances even against the respondent other than the deceased, would be rendered not possible to be proceeded with further and therefore the court would refuse to deal with the appeal further and dismiss it. This Court proceeding further observed as follows: (AIR pp. 90-91, paras 6-8)*

*"6. The question whether a court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed.*

*7. There has been no divergence between the courts about the court's proceeding with the appeal between the respondents other than the deceased respondent, when the decree in appeal was not a joint decree in favour of all the respondents. The abatement of the appeal against the deceased respondent, in such a case, would make the decree in his favour alone final, and this can, in no circumstances, have a repercussion, on the decision of the controversy between the appellant and the other decree-holders or on the execution of the ultimate decree between them.*

*8. The difficulty arises always when there is a joint decree. Here again, the consensus of opinion is that if the decree is joint and indivisible, the appeal, against the other respondents also will not be proceeded with and will have to be dismissed as a result of the abatement of the appeal against the deceased respondent. Different views exist in the case of joint decrees in favour of respondents whose rights in the subject-matter of the decree are specified. One view is that in such cases, the abatement of the appeal against the deceased respondent will have the*

*result of making the decree affecting his specific interest to be final and that the decree against the other respondents can be suitably dealt with by the appellate court. We do not consider this view correct. The specification of shares or of interest of the deceased respondent does not affect the nature of the decree and the capacity of the joint decree-holder to execute the entire decree or to resist the attempt of the other party to interfere with the joint right decreed in his favour. The abatement of an appeal means not only that the decree between the appellant and the deceased respondent has become final, but also, as a necessary corollary, that the appellate court cannot, in any way, modify that decree directly or indirectly. The reason is plain. It is that in the absence of the legal representatives of the deceased respondents, the appellate court cannot determine anything between the appellant and the legal representatives which may affect the rights of the legal representatives under the decree. It is immaterial that the modification which the court will do is one to which exception can or cannot be taken."*

***20.*** *This Court noticed the peculiar facts in that case to come to the conclusion that the decree was joint in nature, in favour of both brothers and that in the absence of one of the joint decree-holders due to his death and omission to bring on record the legal representatives, the State cannot get rid of the joint decree and therefore the State appeal against Nathu Ram alone cannot be proceeded with. The salient features noticed therein which weighed with this Court are that the lease of the land was joint, the claim was joint, based on the allegation that the land belonged to them jointly, that the award and joint decree was on that basis and since a claim put forward by the State before the arbitrator itself that the joint application should be treated as separate applications and separate awards should be passed relating to their respective shares was rejected by the arbitrator who in his discretion decided and passed a joint award and the frame of the appeal, with particular reference to the nature of the decree challenged. In rejecting the plea of the State that the legal representative of Labhu Ram would be entitled to be paid separately the share of Labhu Ram only, this Court held that such calculations were foreign to the appeal which were only concerned with the correct amount of compensation payable with respect to the land taken over, as awarded by the arbitrator — the exercise being one and the same — and that there cannot be different assessments of the amount of compensation for the same parcel of land and, therefore, the said question cannot be decided merely on the basis of separate shares.*

***21.*** *It is not necessary to consider individually all the decisions rendered by Benches of two and three learned Judges, brought to our notice, wherein uniformly this Court has held — (a) In case of "joint and indivisible decree", "joint and inseverable or inseparable decree", the abatement of proceedings in relation to one or more of the appellant(s) or respondent(s) on account of omission or lapse and failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal and require to be dismissed in toto, as otherwise*

*inconsistent or contradictory decrees would result and proper reliefs could not be granted, conflicting with the one which had already become final with respect to the same subject-matter vis-à-vis the others; (b) the question as to whether the court can deal with an appeal after it abates against one or the other would depend upon the facts of each case and no exhaustive statement or analysis could be made about all such circumstances wherein it would or would not be possible to proceed with the appeal, despite abatement, partially; (c) existence of a joint right as distinguished from tenancy-in-common alone is not the criterion but the joint character of the decree, dehors the relationship of the parties inter se and the frame of the appeal, will take colour from the nature of the decree challenged; (d) where the dispute between two groups of parties centred around claims or was based on grounds common relating to the respective groups litigating as distinct groups or bodies — the issue involved for consideration in such class of cases would be one and indivisible; and (e) when the issues involved in more than one appeal dealt with as a group or batch of appeals, are common and identical in all such cases, abatement of one or the other of the connected appeals due to the death of one or more of the parties and failure to bring on record the legal representatives of the deceased parties, would result in the abatement of all appeals.*

***26.*** *Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole*

*process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not interdependent upon one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others as well.*

***30.*** *The question, therefore, as to when a proceeding before the court becomes or is rendered impossible or possible to be proceeded with, after it had partially abated on account of the death of one or the other party on either side has been always considered to depend upon the fact as to whether the decree obtained is a joint decree or a severable one and that in case of a joint and inseverable decree if the appeal abated against one or the other, the same cannot be proceeded with further for or against the remaining parties as well. If otherwise, the decree is a joint and several or separable one, being in substance and reality a combination of many decrees, there can be no impediment for the proceedings being proceeded with among or against those remaining parties other than the deceased. As observed in Nathu Ram case [AIR 1962 SC 89 : (1962) 2 SCR 636] itself, the Code does not itself provide for the abatement of the appeal against the other respondents even where, as against one such it has abated but it is only the courts which have held that in certain circumstances the appeal also would abate against a co-respondent as a result of abatement against the deceased respondent. The same would be the position of an appeal vis-à-vis the appellants, as in the other cases. Order 22 Rule 4 also was considered not to provide for abatement of the appeal(s) against the co-respondents of the deceased respondent and it was specifically observed therein that to say that the appeals against them also abated in certain circumstances is not a correct statement. It was held that the appeals against such other respondents cannot be proceeded against and, therefore, had to be dismissed, in certain circumstances.*

***31.*** *But, in our view also, as to what those circumstances are to be, cannot be exhaustively enumerated and no hard-and-fast rule for invariable application can be devised. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being*

*discouraged, except where the mandate of law inevitably necessitates it. Consequently, having regard to the nature of the proceedings under the Act and the purpose of reference proceedings and the appeal therefrom, the courts should adopt a liberal approach in the matter of condonation of the delay as well as the considerations which should weigh in adjudging the nature of the decree i.e. whether it is joint and inseverable or joint and severable or separable. The fact that the Reference Court has chosen to pass a decree jointly in the matters before us is and should be no ground by itself to construe the decree to be joint and inseparable. At times, as in the cases on hand, the court for its convenience might have combined the claims for joint consideration on account of similar nature of the issues in all such cases and for that reason the parties should not be penalized, for no fault of theirs. Actus curiae neminem gravabit (an act of court shall prejudice no one) is the maxim of law, which comes into play in such situations. A number of people, more for the sake of convenience, may be counselled to join together to ventilate, all their separate but similar nature of claims and this also should not result in the claims of all such others being rejected merely because one or the other of such claims by one or more of the parties abated on account of death and consequent omission to bring on record the legal heirs of the deceased party. At times, one or the other parties on either side in a litigation involving several claims or more than one, pertaining to their individual rights may settle among themselves the dispute to the extent their share or proportion of rights is concerned and may drop out of contest, bringing even the proceedings to a conclusion so far as they are concerned. If all such moves are allowed to boomerang adversely on the rights of the remaining parties even to contest and have their claims adjudicated on merits, it would be a travesty of administration of justice itself.*

***32.*** *The area of differences in the catena of decisions brought to our notice is not so much with reference to the principles to be applied to different nature of decrees but only as to which of the decree(s) falls, when or under what circumstances under one or the other of the classification i.e. joint and inseverable or joint and severable or separable. This aspect seems to have been adjudged in different cases depending upon the nature/source of rights, the cause of action, the manner they were asserted by the parties themselves and the contradictory nature of decrees impossible of execution, likely to result when considered differently. It is for this reason any standardised formula was avoided and the matter left for the consideration of courts, on the peculiar nature of the cases coming for determination. Having regard to the peculiar facts and circumstances noticed by us that the appellant claimants have each their own distinct, separate and independent rights, the principles enumerated in Harihar Prasad case [(1975) 1 SCC 212 : (1975) 2 SCR 932] and Indian Oxygen Ltd. case [ CA No. 1444 of 1966, dated 24-9-1968] squarely apply with all force. The appeals even dehors the claims of the deceased and others who have not chosen to approach the High Court or this Court, were neither rendered incapable of consideration nor impossible of according any relief nor could be held difficult to enforce the decree that may be*

*passed, in favour of the remaining appellants without suffering the vice of inconsistency. Even if it is likely to result in two different sets of judgments of varying content, purport or reason, as long as the enforcement of the decrees passed therein is not rendered impossible due to mutual contradiction in terms of self-destructive nature, there is no justification whatsoever to assume them to be inconsistent or contradictory decrees, at all. The mere fact that in a set of similar or identical nature of cases two different nature or type of decrees were necessitated is no reason to treat them to be inconsistent or contradictory decrees, so long as both can be executed and enforced without either of them being destructive of the other. Contradictory or inconsistent decrees, consequently, could be held to have resulted only in a given case when the relief granted in one cannot be enforced/realized without denying the relief in the other or totally nullifying or setting at naught the relief granted in the other, and in no other class of cases.*

***33.*** *Even assuming that the decree appealed against or challenged before the higher forum is joint and several but deals with the rights of more than one recognized in law to belong to each one of them on their own and unrelated to the others, and the proceedings abate in respect of one or more of either of the parties, the courts are not disabled in any manner to proceed with the proceedings so far as the remaining parties and part of the appeal is concerned. As and when it is found necessary to interfere with the judgment and decree challenged before it, the court can always declare the legal position in general and restrict the ultimate relief to be granted by confining it to those before the court only rather than denying the relief to one and all on account of a procedure lapse or action or inaction of one or the other of the parties before it. The only exception to this course of action should be where the relief granted and the decree ultimately passed would become totally unenforceable and mutually self-destructive and unworkable vis-à-vis the other part, which had become final. As far as possible, courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose, "ubi jus ibi remedium" (where there is a right, there is a remedy) being a basic principle of jurisprudence. Such a course would be more conducive and better conform to a fair, reasonable and proper administration of justice.*

***34.*** *In the light of the above discussion, we hold:*

*(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for the purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.*

*(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings, as the one now before us,*

*under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or against one or more of the parties and not as joint and inseparable decrees.*

*(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.*

*(4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-à-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other.*

[ii] In ***Shahazada Bi and Others vs. Halimabi (since dead) by her LRs.***[11] with regard to abatement of the suit in respect of a partition suit, while considering abatement in terms of order XXII Rule 4 CPC, the Hon'ble Apex Court, in para 9, observed as follows:

***9.*** *We do not find any merit in this civil appeal. As stated above, the plaintiffs instituted the suit inter alia for recovery of possession of seven rooms more particularly described in Schedule 'B' to the plaint. Schedule 'B' gave detailed description of the suit property. Each of the seven rooms has been marked on the sketch tendered in evidence as Exts. B-1 to B-7. In the plaint, the original plaintiffs separately mentioned the rooms in possession of each of the defendants vide paragraph 5. They gave a separate schedule to the plaint, which described the rooms in possession of each of the above defendants. Schedule 'B' also gave the dimension of each room. Further, the plaintiffs sought possession of each of the rooms separately from each of the defendants vide paragraph 11 read with Schedule 'B' to the plaint.*

[11] (2004) 7 SCC 354

*In the evidence, the plaintiffs produced and proved the map (Ext. P-8) based on the description of the seven rooms which tallied with the description in Schedule 'B'. Further, the defendants herein alleged that they were in possession of the seven rooms with the consent of Essanullah. In the suit, the defendants further contended that they had perfected their title in respect of each of the seven rooms by adverse title. The most clinching fact was that Defendant 4 had died during the pendency of the suit. Defendant 4 was in possession of a room leased out to Defendant 5 for rent. Taking into account the above circumstances, the trial court was right in holding that the suit against Defendant 4 alone stood dismissed as abated. The trial court was, therefore, right in decreeing the suit of the plaintiffs as prayed for only against Defendants 1 to 3. Order 22 Rule 4 CPC lays down that where within the time limited by law, no application is made to implead the legal representatives of a deceased defendant, the suit shall abate as against a deceased defendant. This rule does not provide that by the omission to implead the legal representative of a defendant, the suit will abate as a whole. What was the interest of the deceased defendant in the case, whether he represented the entire interest or only a specific part is a fact that would depend on the circumstances of each case. If the interests of the co-defendants are separate, as in case of co-owners, the suit will abate only as regards the particular interest of the deceased party. (See Masilamani Nadar v. Kuttiamma [1960 Ker LJ 936] .) In the case Sant Singh v. Gulab Singh [AIR 1928 Lah 573] it has been held that under Order 22 Rule 4(3) read with Order 22 Rule 11 CPC where no application is made to implead the legal representative of the deceased respondent, the appeal shall abate as against the deceased respondent. That, so far as the statute is concerned, the appeal abates only qua the deceased respondent, but the question whether the partial abatement leads to an abatement of the appeal in its entirety depends upon general principles. If the case is of such a nature that the absence of the legal representative of the deceased respondent prevents the court from hearing the appeal as against the other respondents, then the appeal abates in toto. Otherwise, the abatement takes place only in respect of the interest of the respondent who has died. The test often adopted in such cases is whether in the event of the appeal being allowed as against the remaining respondents there would or would not be two contradictory decrees in the same suit with respect to the same subject-matter. The court cannot be called upon to make two inconsistent decrees about the same property, and in order to avoid conflicting decrees the court has no alternative but to dismiss the appeal as a whole. If, on the other hand, the success of the appeal would not lead to conflicting decrees, then there is no valid reason why the court should not hear the appeal and adjudicate upon the dispute between the parties. It was further held in the said judgment that a distinction must be made between the cases in which there is specification of shares or interests, and those in which there is no specification of interests. That in cases where there is a specification of share or interest, the appeal cannot abate as a whole. That in such cases, the appeal abates only in respect of the interest of the deceased*

*respondent and not as a whole. To the same effect is the ratio of the judgment of this Court in the case of Sardar Amarjit Singh Kalra v. Pramod Gupta [(2003) 3 SCC 272] in which it has been held that existence of a joint right as distinguished from tenancy-in-common alone is not the criterion but the joint character of the decree dehors relationship of the parties inter se and the frame of the appeal will take colour from the nature of the decree challenged. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice. A careful reading of Order 22 CPC would support the view that the said provisions were devised to ensure continuation and culmination in an effective adjudication. It was further observed that the mere fact that a khata was a joint khata was not relevant for deciding the question of abatement under Order 22, as long as each of the appellants had their own independent, distinct and separate shares in the property. It was held that wherever the plaintiffs are found to have distinct, separate and independent rights of their own, joined together for the sake of convenience in a single suit, the decree passed by the court is to be viewed in substance as the combination of several decrees in favour of one or the other party and not as a joint decree. The question as to whether the decree is joint and inseverable or joint and severable has to be decided, for the purposes of abatement, with reference to the fact as to whether the decree passed in the proceedings vis-à-vis the remaining parties would suffer the vice of inconsistent decrees or conflicting decrees. A decree can be said to be inconsistent or contradictory with another decree only when two decrees are incapable of enforcement and that enforcement of one would negate the enforcement of the other.*

[iii] In a case between ***Mahabir Prasad vs. Jage Ram and others***[12], the Hon'ble Apex Court observed with regard to the legal position when a party respondent dies and other legal representatives are already on record, para 6 which reads as follows:

***6.*** *In a later judgment of this Court in Ratan Lal Shah v. Firm Lalmandas Chhadammalal [(1969) 2 SCC 70 : AIR 1970 SC 108 : (1970) 1 SCR 296 : (1970) 1 SCJ 350] the plaintiffs obtained a joint decree against two persons — Ratan Lal and Mohan Singh. Against the decree Ratan Lal alone appealed to the High Court of Allahabad. Mohan Singh was impleaded as a party-respondent to the appeal. Notice of appeal sent to Mohan Singh was returned unserved, and no steps were taken to serve him with notice of the appeal. The High Court dismissed the appeal holding that there was a joint decree against Ratan Lal and Mohan Singh*

[12] AIR 1971 SC 742

*in a suit founded on a joint cause of action and the decree against Mohan Singh had become final. The appellant could not, on that account claim to be heard in his appeal; if he was heard and his claim was upheld. The High Court observed that there would be two conflicting decisions between the same parties and in the same suit based on the same cause of action. This Court set aside the judgment of the High Court observing that even though Mohan Singh was not served with notice of appeal, the appeal filed by Ratan Lal was maintainable, in view of the provisions of Order 41 Rule 4 of the Code of Civil Procedure. In Ratan Lal Shah case this Court allowed the appeal to be prosecuted, even though one of the joint decree-holders impleaded as a party-respondent had not been served with the notice of appeal. In the present case one of the respondents had died and his heirs have not been brought on the record. No distinction in principle may be made. between Ratan Lal Shah case and the present case. Competence of the appellate court to pass a decree appropriate to the nature of the dispute in an appeal filed by one of several persons against whom a decree is made on a ground which is common to him and others is not lost merely because of the person who was jointly interested in the claim has been made a party-respondent and on his death his heirs have not been brought on the record. Power of the appellate court under Order 41, Rule 4, to vary or modify the decree of a Subordinate Court arises when one of the persons out of many against whom a decree or an order had been made on a ground which was common to him and others has appealed. That power may be exercised when other persons who were parties to the proceeding before the Subordinate Court and against whom a decree proceeded on a ground which was common to the appellant and to those other persons are either not impleaded as parties to the appeal or are impleaded as respondents. The view taken by the High Court cannot therefore be sustained.*

76. It is clear from the record that, the properties of Maddula Subbarao and Sarvalakshmi are the subject matters of the claim for partition. The intestate deaths of both of them are clear from the discussion made in the above points. The legal representatives of Maddula Subbarao will include his wife. The plaintiff and her legal representatives represents one branch, Kusuma Kumari and her legal representatives represents another branch and the defendant No.4 represents another branch. There are total three branches who can legally inherit the properties of M. Subbarao and his wife Sarvalakshmi. The legal representatives of Kusuma Kumari are defendant

Nos.1 to 9. The written statement filed by defendant No.1 was adopted for defendant Nos.2,3 and 5 to 8.

77. Defendant No.5 is deemed to have not taken any specific plea or defence. As rightly contended by the learned counsel for the respondents in this appeal (plaintiff), the Trial Court did not grant a decree in favour of defendant Nos.5 and 9. Even otherwise they are entitled for share in the share of Kusuma Kumari along with their father, Manga Raju, defendant No.1. Although no share was granted either to defendant No.5 or defendant No.9, no appeal is preferred. Even otherwise, legal representatives of Kusuma Kumari branch are present and contesting. It is not the case that the legal representatives of defendant No.5 are likely to have different stand than defendant No.5. They are bound by the pleadings of defendant No.5.

78. The plaintiff's contention is that, initially upon the death of Maddula Subbarao, (i) the plaintiff's branch, (ii) the branch of Kusuma Kumari and (iii) Sarvalakshmi are entitled for 1/3rd share each and as Sarvalaskhmi bequeathed her own property and her share. Therefore, the plaintiff is entitled for 2/3$^{rd}$ share and the branch of Kusuma Kumari is entitled for 1/3$^{rd}$ share. Whereas, the contention of the defendant No.4 is that the entire property was given under a settlement by Maddula Subbarao under adoption document and that Sarvalakshmi bequeathed her property.

79. Further, the contention of the defendant No.4 that the entire property was settled under the adoption deed is found not acceptable, as Ex.B2 does not advance such case. Further, the bequeath of property by Sarvalakshmi

under Ex.B11 is also not acceptable for want of proper evidence as to proving her Will and in view of the suspicious circumstance. Therefore, that document is also not helpful. In such an event the sharers would be (i) the plaintiff or her legal representatives, (ii) the branch of Kusuma Kumari and (iii) defendant No.4 being adopted son.

80. In view of the adoption, defendant No.4 entitled for 1/3rd share. Further in the branch of Kusuma Kumari, whom the other legal heirs are on record, abatement does not arise, as it is not the specific case pleaded by defendant Nos.5 or 9 that they are claiming any independent and separate rights. By the time when they were on record, the rights, if any, they have shall devolve on their legal representatives which can be worked out in the final decree proceedings. There will be no prejudice either to the legal representatives of defendant No.5 or to defendant No.9 or other defendants even who are the children of Kusuma Kumari. All of them can claim rights under Kusuma Kumari 1/3rd share.

81. In the given facts and circumstances of the case and in the light of the observations made in the above cases *[*cited *supra 10, 11 and 12]*, the argument that there shall be abatement of the entire case found not convincing. The point framed is answered accordingly against the appellant.

**Point No.5**

82. Admittedly, the plaintiff is the daughter of Maddula Subbarao and Sarvalakshmi. In view of the adoption, defendant No.4 gets the status of a

son and is entitled to claim a share in the properties of Maddula Subbarao and Sarvalakshmi. Likewise, the legal representatives of Kusuma Kumari are also entitled to shares in view of the admitted relationship. Therefore, the plaintiff or her legal representatives are entitled to 1/3rd share. Hence, the decree granted by the Trial Court does not require any interference. The point framed is answered accordingly.

**Point No.6:**

83. In view of the discussion and conclusions drawn under point Nos.1 to 5, the judgment and decree dated 16.12.2002 passed in O.S.No.221 of 1987 are found fit to be confirmed in all respects. The point framed is answered accordingly.

**Point No.7 (Cross-Objections):**

84. The respondents/plaintiff in cross objections relied on Ex.A12-Will and disputed the reliance placed by the Trial court on Exs.B2 to B7 and B10. The reasoning of the learned Trial Court with regard to whether the Ex.A12-Will can be relied on and whether adoption covered by Ex.B2 is valid particularly in the light of the corroborative conduct of the invitation prior to adoption and subsequent conduct of Maddula Subbarao in acting upon the adoption like showing defendant No.4 as his son in school records etc. are all exhaustively discussed above in this appeal. In view of the discussion made above and the conclusions drawn as to Ex.B2-adoption deed and failure to prove Ex.A12-Will etc., the cross-objections does not

merit any consideration and are fit to be rejected. The Point framed is answered accordingly.

**Point No.8:**

85. In the result,

(i). The appeal is dismissed.

(ii). The Cross-objections *vide* I.A.No.2 of 2004 (Cross Objections (SR) No.6296 of 2004) are also dismissed.

(iii). There shall be no order as to costs in the facts and circumstances of the case and in view of the relationship between the parties.

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

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**JUSTICE A.HARI HARANADHA SARMA**

Date:11.11.2026

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Whether the order is:

| | | | |
|---|---|---|---|
| Speaking | | Reasoned | ✓ |
| Reportable | ✓ | Non-reportable | |

**HON'BLE SRI JUSTICE A. HARI HARANADHA SARMA**

**I.A.No.2 of 2004 (X-OBJ(SR) No.6296 of 2004)**

**IN / AND**

**A.S.No.3356 of 2003**

**11.11.2026**

**Note**:
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Soft copy of the judgment marked L.R. Copy
has been placed in the L.R. folder.