

S U P R E M E      C O U R T   O F      I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).17144/2008

(From the judgement and order dated 21/03/2007 in                      SA No.  
512/1995 of The HIGH COURT OF JUDICATURE, A.P AT HYDERABAD)

MOTHURU NARAYANA (D) THR.LRS.& ORS.

Petitioner(s)

VERSUS

PAMIDIMUKKALA SATYANARAYANA

Respondent(s)

(With appln(s) for exemption from filing O.T. and prayer for  
interim relief and office report)

Date: 31/03/2010      This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA  
HON'BLE MR. JUSTICE C.K. PRASAD

For Petitioner(s)      Mr.    S.B. Sanyal, Sr. Adv.  
                                 Mr.    K. Maruthi Rao, Adv.  
                                 Ms.    K. Radha, Adv.  
                                 Ms.    Anjani Aiyagari, Adv.

For Respondent(s)

                                 Mr. C.S.N. Mohan Rao, Adv.  
  
                                 Mr. C. Balakrishna, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeal is partly allowed in terms of the  
signed order.

(KALYANI GUPTA)  
SR. P.A.

(VINOD KULVI)  
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]  
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2916 OF 2010  
(ARISING OUT OF SLP(C)No.17144 of 2008)

MOTHURU NARAYANA      (D)  
THR.LRS. & ORS.

.... APPELLANTS

VERSUS

PADMIDIMUKKALA SATYANARAYANA

....RESPONDENT

O R D E R

Leave granted.

2. Plaintiff is the appellant and being aggrieved by the judgment and decree passed by the Andhra Pradesh High Court affirming the judgment and decree of the First Appellate Court, modifying and setting aside the judgment and decree passed by the trial court in favour of the plaintiff has filed this appeal by special leave. The suit property is a dwelling house measuring 410 square yards, situated at Repalle Town. The defendant who is the respondent herein is the owner of 3/4th share of the said property and one Shri Anikendu C.A. No..... of 2010 @ SLP (C) 17144 of 2008

4

was the owner of balance 1/4th share. The plaintiff purchased the aforesaid 1/4th share of the property under Exhibit A1 for consideration of Rs.3,000/- on 18.2.1976 and thereafter filed a suit seeking for decree of partition of his share. During the pendency of the suit an amendment application was filed seeking to add the relief for delivery of possession of 1/4th share of the suit property. The trial court after hearing the parties, decreed the suit. Aggrieved by the aforesaid judgment an decree passed, the defendant filed appeal before the First Appellate Court which modified the decree passed by the trial court holding that the plaintiff is entitled to 1/4th share of the suit property but in terms of Section 4 of the Partition Act, he would be entitled to receive a sum of Rs.3,000/- towards the value of his 1/4th share with interest at the rate of 6% per annum thereon from the date of purchase i.e. 18.2.1976 from the defendant.

3. Aggrieved by the said judgment and decree of the First Appellate Court the plaintiff filed Second Appeal

respective pleadings as also the evidence adduced by  
the parties.

It upheld the judgment and decree passed  
by the First Appellate Court and while doing so  
referred to pleading of the defendant that he  
is willing to buy 1/4th share from plaintiff. The High

Court took note of para 4 of the written statement  
wherein the defendant himself had admitted that the  
plaintiff is entitled to 1/4th share in the suit  
property. Accordingly the High Court observed  
as

under :

"The only course left to the plaintiff  
is to offer his interest in the suit house to  
the defendant as he is admittedly the stranger  
and the house is a dwelling house and in view  
of the impracticability of any partition by  
metes and bounds, the defendant is willing to  
purchase the plaintiff's interest at the  
market value."

4. The High Court thereafter referred to t  
he provisions of Section 4 of the Partition Act a  
nd

directed the defendant to pay a sum of Rs.3,000/- along  
with interest at the rate of 6 per cent per annum from  
the date of the purchase.

5. We have heard the learned counsel appearing for  
C.A. No..... of 2010 @ SLP (C) 17144 of 2008

the parties and have also perused the record.

6. Counsel appearing for the appellant drew our  
attention to Section 4 of the Partition Act and  
forcefully contended that the purchase money of the  
year 1976 ought not to have been assessed as the proper  
valuation of the share envisaged under Section 4 of the  
Partition Act. We find force in the said submission of

the counsel appearing for the appellant. Section 4 of the Partition Act, which is relevant for the purpose reads as follows :

"4. Partition suit by transferee of share in dwelling-house.-(1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section."

C.A. No..... of 2010 @ SLP (C) 17144 of 2008

7

7. From a plain reading of Section 4(1), it is evident that if any member of the family who happens to be a shareholder, undertakes to buy the share of a transferee, the court shall make valuation of the share transferred. For making valuation, the parties have to be given an opportunity to lead evidence.

8. Neither the First Appellate Court while modifying the decree nor the High Court while affirming the said decree had undertaken the aforesaid exercise. The trial court had also adverted to this issue at all. There is no dispute with regard to the share of the respective parties so far as the suit property is concerned. There is no evidence in regard to the value of the property sought to be partitioned, over which the claim of the plaintiff has been decreed. In the absence thereof this issue can not be decided. As evidence is necessary to determine this issue parties shall be at liberty to lead such oral or documentary

9. Therefore, while affirming the decree for the partition, we set aside the judgment and decree passed by the courts below directing the defendant to pay to the plaintiff a sum of Rs.3,000/- alongwith interest thereon @ 6% from 18.2.1976 and remit the matter to the trial court to determine the value of share in terms of Section 4 of the Partition Act. Amount so determined will be paid by the defendant to the plaintiff.

10. The appeal is partly allowed in the terms aforesaid.

.....J.

.....  
(DR. MUKUNDAKAM SHARMA)

.....J.

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(C.K. PRASAD )