A CRITICAL NOTE ON THE DECISION REPORTED IN 2004 (3) ALD NOC 241 BETWEEN G. VALLI v. STATE OF A.P. AND ANOTHER — Regarding the impact of Section 29-A of Hindu Succession Act, on A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 with special reference to Sections 3(f) and 4(2) of the Act, requires reconsideration

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The rationale of this decision,

"The revision petitioners were unmarried minor daughters by the date of the Act. Therefore, they were included in the family unit.

Had they been majors by 1-1-1975, they would have been entitled for the benefit under the amendment Act, by getting a share in the joint family property on par with their brothers.

They are entitiled for share in the family holding, subject to the Government taking possession of the excess land, from lands of the family, but as the revision petitioners are admittedly minors as on 1-1-75 they cannot claim any benefit under Section 29-A of the Hindu Succession Act, 1956.

His Lordship, appears to have made this observation "Had they been majors by 1-1-1975, they would have been entitled for the benefit under the amended Act, by getting a share the joint family property on par with their brothers" in a casual way while dealing with the claim of minors by 1-1-1975"

This observation of His Lordship cannot be considered as an authoritative decision laying down the entitlement of a major unmarried daughter by 1-1-1975 invoking the doctrine laid down in Section 29-A of the Hindu Succession Act 1956.

But yet, it leads to an anomaly likely to crop up. Even a cursory reading of the decision makes it clear 1) the earlier Bench Decision of the High Court of Andhra Pradesh (1998 (1) ALT 496) "Major unmarried daughters in the family cannot be treated as a separate family unit by virus of the Hindu Succession Act, Section 29-A has no overriding effect and the other decision of the Supreme Court, 2) In *M. Vankata Sujatha v. Land Reforms Tribunal* 2000 (6) ALT 31 S.C. His Lordship Justice *M. Jaganadha Rao*, as he then was speaking for the Bench upheld the view taken by the Bench Decision of High Court of Andhra Pradesh 1998 (1) ALT 496 in *Vtukuri Sarat Kumar v. Authorised Officer*, which is to the following effect (please see Para 9 of Page 34)

"The High Court held that the incidence of co-parcenary began from 5-9-1985. It also held the Section 29-A could only override Section 6 of Hindu Succession Act, 1956 and would not override the provisions of the Andhra Pradesh Land Reforms Act, 1973 and the relevant operative portion is extracted as hereunder (please see Para 10 at Page 35)

"*Section 29-A introduced with effect from 5-9-1985, would not have the effect of taking out any land from out of the excess land computed or to be computed as against the father as on 1-1-1975. We are in agreement with the decision of the High Court in Vtukuri Sarat Kumar v. Authorised Officer* (supra)

And the latest decision of the Apex Court, 3) in *B. Chandra Sekhar Reddi v. State of A.P.*, 2003 SAR (Civil) 502 to a similar effect that Section 29-A of Hindu Succession Act, has no impact on the fixation of the ceiling limit" were not brought to the attention of the learned Judge, as the question on facts, fell for consideration before His Lordship is with respect to the claims of minors. With due respect, the observations made by the learned

Judge regarding the entitlement of a an unmarried major daughter under Section 29-A for a separate unit, may not be considered as an authoritative pronouncement.

Even otherwise, the provision of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 have an overriding effect on other laws and the relevant Section 28 is extracted as hereunder:

The provision of the Act, shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force on any custom, usage or agreement or decree or order of a Court, Tribunal or authority similarly Section 17(3) of the Act, nullifies the decree or order of Civil Court any award or order of any authority.

The impact of the Sections 17(3) and 20, 28 of the Act, is that the Ceiling Act, being a special Act, if any of the provisions or rules made there under, are found in consistent with the provisions contained in any other enactment, the provisions of the Ceiling Act, will preveir (AIR 1973 M.P. Page 52).

The expressions in the section "in any other law for the time being in force" are clear explicit and admits no argument and in view of the harmonious interpretation of the section, it is submitted Section 29-A of the Hindu Succession which gives a right by birth, may be pressed into service with respect to the other properties of the father, and cannot be extended for determination or fixing the ceiling limit. May be the unmarried major daughter subject to the twin conditions, can at best claim for share among others in the remainder of the property after surrender, if any.

May be perhaps, due to inadvertance or otherwise none of the Courts be it High Court of Andhra Pradesh or Supreme Court, have considered the overriding effect of Section 28 Land Reforms over the other laws. The effect of the section is somehow missed and was not mooted. A new theory not covered by the decisions is thus ventilated or focused for the Hon'ble Courts as and when the cause of action accures.

As there is a hostile discrimination between major sons *vis-a-vis* unmarried major daughters in the method of fixation of ceiling area under A.P. Land Reforms, the author of this critic already contributed an article under the capton of

"Hostile discrimination between major sons *vis-a-vis* unmarried major daughters in the matter of fixation of ceiling area under A.P. Land Reforms and amendments suggested" which was published in 2004 (3) ALT 102, which may be read as par of this critical note.

Though the observations of the learned Judge may not be considered as laying down the law regarding the entitlement of an unmarried major daughter, as it is in conflict with the Bench Decision of the A.P. High Court, and inconsistent view of the Supreme Court, (The Supreme Court in his judgment reported in AIR 1997 SC 3519 deprecated the tendency of ignoring the law settled by the Supreme Court) still it may lead to the cropping up several anomalies, and leads to confusion, as the subordinate judiciary and the litigant public are in a quandary with respect legal effect of the present observations covered by the subject-matter of the critical note which appears to be in total disregard to the well settled proposition of law, snapping the line of consistenancy over a long range of legal history.

The object of this article, is only to suggest for reconsideration, as the observations are likely to open flood gates of controversy and on the conspectus of preponderance of case-law or plethora of precedents, the observations require reconsideration as and when a cause of action arises. Be this as it may. It is for subordinate judiciary to consider the legal effect of these observations in the view of the golden thread of law covered by the Apex Court, laying down the law otherwise and set at rest the controversy, and lay emphasis on the overriding effect of other laws, as enshirined in Section 28 of the Act.