
(1999) 07 AP CK 0049
In the Andhra Pradesh High Court
Case No : AS No. 2241 OF 1985

Agasti Karuna and another	Vs	APPELLANT
Cherukuri Krishnaiah and others		RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1)
Limitation Act, 1963 — Article 65

Citation : (1999) 5 ALD 387 : (1999) 5 ALT 494 : (1999) 3 CivCC 205

Hon'ble Judges : I. Venkatanarayana, J

Bench : Single Bench

Advocate : Mr. C. Poornaiah, for the Appellant; Mr. D. Sudahakara Rao, for the Respondent

Judgement

1. Unsuccessful plaintiffs in the suit are the appellants herein. O.S.No.3 of 1977 on the file of the Subordinate Judge, Bapatala was filed by the plaintiffs for partition of item Nos.2 and 4 of the plaint "A" schedule in to four equal shares and to allot one such share to each of the two plaintiffs and for delivery of separate possession and also for declaration that the plaintiffs are successors in respect of Item No.1 of plaint "A" schedule and that they are entitled to 1/3rd share in the plaint "A" schedule properties.
2. For the sake of convenience the parties in this appeal would be referred to in accordance with their ranking in the suit.
3. The plaint averments in brief are as set out hereunder: - Plaintiffs 1 and 2 claim themselves to be the daughters of late Pandalaneni Hanumantha Rao, hereinafter referred to as "Hanumantha Rao" for the sake of convenience. Defendant No.3 is the son and defendant No.4 is the wife of late Hanumantha Rao, Late Hanumantha Rao was having plaint "A" schedule properties. Item No.1 of plaint "A" schedule is Ac.1-00 of wet land situate in Khajipalam village. Item No.2 is Ac.1-04 cents of wet land in D.No.457/6 of Khajipalem village. Item No.5 is Ac.0-61 cents of wet land in item No,2. Item No.3 is Ac.0-29 cents of wet land

in D.No.457/5 and item No.4 is a vacant site of Ac.0-05 cents which is house-site. Regarding item No.1 it is the case of the plaintiffs that late Hanumantha Rao executed a registered gift deed dated 16-5-1945 conferring life estate on the 4th defendant Nagendramma and the vested remainder in favour of the plaintiffs. The plaintiffs have accepted these gifts and according to them they are entitled for declaration of title and possession of the said land. Regarding items 2 to 5 of plaint "A" schedule, the plaintiffs' case is as set out hereunder: - In 1961 late Hanumantha Rao died in testate and possessed of items 2 to 4 of plaint "A" schedule and leaving behind him the plaintiffs and defendants 3 and 4 as his legal representatives. Each of the plaintiffs is entitled to 1/4th share as per Hindu Succession Act, 1956 and in item No.1 of the plaint "A" schedule each of the plaintiffs has 1/3rd share. According to the plaintiffs, defendants 1 and 2 in collusion with the 4th defendant Nagendramma brought into existence some documents without any consideration. The 2nd defendant purchased item No.5 of plaint "A" schedule under a registered sale-deed dated 12-3-1964 executed by the 4th defendant on her behalf as well as guardian of the 3rd defendant. The 1st defendant is in unlawful possession of items 1 and 2 and an extent of Ac.0-42-3/4 cents in item No.2. According to the plaintiffs, defendants 1 and 2 did not get any valid title and the transactions are void in law. Plaintiffs further contended that the 4th defendant did not obtain any permission from the Court before alienating the properties as per the requirement of Hindu Minority and Guardianship Act, 1956 and that the alienations are bad in law.

4. Defendants 3 and 4 remained ex parte. The case of defendants 1 and 2 is similar although they filed separate written statements and their stand is as set out hereunder:- The plaintiffs are not the daughters of late Hanumantha Rao. Even otherwise the gift deed dated 16-5-1945 set up by the plaintiffs is not valid. Even otherwise what the 4th defendant gets by virtue of the gift deed is absolute title over the property but not limited estate as per the recitals in the gift deed. The rights of the women are enlarged u/s 14(1) of the Hindu Succession Act. Thus, according to the defendants, item No. 1 of plaint "A" schedule is the absolute estate given to the 4th defendant and that the concept of limited estate has become absolute. The case of defendants 1 and 2 further is that the suit is hopelessly barred by limitation and that the suit is not maintainable because the plaintiffs did not file the suit within three years of becoming major, and secondly the defendants have perfected their title by adverse possession for more than 12 years. For this reason also, according to the defendants, the suit is liable to be dismissed. The 1st defendant purchased Ac. 1-63 cents in items 1 to 3 from defendants 3 and 4 under a contract of sale dated 5-9-1962 for a consideration of Rs.42-20 per cent and has paid a total sum of Rs.6967/-. The 1st defendant was put in possession on 5-9-1952 and ever since that time he has been enjoying the property in his own right and adverse to the rights of the family of defendants 3 and 4 and has been paying cist. At that time the 3rd defendant was a minor and the 4th defendant wanted to purchase the lands at Kolakaluru and Annamarlapudi Agraharam and settled at Kolakaluru which is her paternal aunt's

place. With that idea she sold the land of Ac.1-63 cents in the suit schedule lands and in fact defendants 1 and 2 paid the consideration for the said land purchased by the 4th defendant at Kolakaluru and Annamalapudi Agraharam. These two sale deeds were registered on 5-9-1964 and they prove that for a valid consideration defendants 3 and 4 sold the plaint "A" schedule lands and purchase different lands at Kolakaluru and Annamarlapudi Agraharam. Defendants 1 and 2 further contended that the plaintiffs colluded with defendants 3 and 4 and got the suit filed to unsettle the established rights of defendants 1 and 2 over the plaint "A" schedule items 1 to 3 and 5.

5. The trial Court framed appropriate issues on the question of limitation and also as to whether the 4th defendant acquired absolute rights u/s 14(1) of the Hindu Succession Act. the trial Court held that the plaintiffs are the legal heirs of the deceased Hanumantha Rao and that the suit is hopelessly barred by limitation and that the 4th defendant acquired absolute rights u/s 14(1) of the Hindu Succession Act, 1956 and so holding the trial Court dismissed the suit. Hence the present appeal.

6. At the out set I would like to examine the question of limitation first. The 1st defendant contends that he has perfected his title to Ac.1-63 cents which are items 1 to 3 of plaint "A" schedule by adverse possession. The document Ex.B1 shows that the first defendant was put in possession on 5-9-1962. The second defendant was also likewise put in possession around the same time. The present suit has been filed in forma pauperis on 5-3-1975 which is beyond the period of 12 years. Under Article 60 of the Limitation Act the minor can question the transaction within three years of his attaining majority. The 1st plaintiff is aged 22 years and his date of birth is not established by the plaintiff by adducing any evidence whatsoever. But even from the admissions of the 1st defendant she has filed the suit after three years of attaining majority. Thus even if we consider that the sale transactions in favour of defendants 1 and 2 are voidable, it is clear that the plaintiffs have not come to the Court within three years after attaining majority. The plaintiffs also have not adduced any evidence with regard to their ages and their dates of birth. Under Article 65 of the Limitation Act the time-limit by which one can claim possession of immovable property is 12 years from the date when such possession of the defendants becomes adverse to the plaintiffs. The plaintiffs did not establish that they have come to Court within the period of 12 years from the date of dispossession. On the other hand, the first defendant clearly established that himself and the 2nd defendant were given possession more than 12 years prior to the date of institution of the suit. It is interesting to note that the first plaintiff as PW1 admits in the cross-examination that defendants 1 and 2 are in possession of the property since 20 years. Even as per the plaintiffs' own admission, defendants 1 and 2 have shown that they have purchased the property by paying the sale consideration. So defendants 1 and 2 must be held to have been in possession of the plaint "A" schedule items 1 to 3 and 5 in their own right and adverse to the claims of the plaintiffs and defendants 3 and 4. Defendants 3 and 4 were given notices by the trial Court

and they chose to remain ex parte, from the afore-mentioned discussions I have no hesitation in holding that the suit is hopelessly barred by limitation.

7. Now coming to the very important question as to whether the 4 defendant by virtue of Section 14(1) of the Hindu Succession Act, 1956 has acquired absolute rights and not limited rights. In this connection it is to be seen that by virtue of Section 14(1) of the Hindu Succession Act, 1956 any property possessed by a female Hindu would be held by her as full owner thereof. Statutorily this recognition of the right of a female Hindu was given retrospective effect. It is not out of place to mention that the concept of Hindu Woman's right to maintenance has become absolute now. This position was upheld by the Supreme Court in *V. Tulasamma v. Sesha Reddy*, AIR 1977 SC 1944. The Supreme Court also had an occasion to decide a similar issue in *Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others*, . In this case the Supreme Court affirmed its earlier decision reported in *V. Tulasamma v. Sesha Reddy* (supra). The Supreme Court has held as follows:

"The words "possessed by" used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title."

In the present case the 4th defendant has acquired title under Ex.A4 dated 16-5-1945. The Supreme Court also had an occasion to deal with a similar situation of enlargement of widow's estate into full or absolute estate in *Nazar Singh and others Vs. Jagjit Kaur and others*, , the Supreme Court held as follows:

.....Where, however, the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award whereunder the property is given to her."

In the instant case admittedly the 4th defendant was put into possession of the property settled on her by her husband under Ex.A4 dated 16-5-1945. Being the widow she was entitled to life estate but by virtue of Section 14(1) and by virtue of the decisions of the Supreme Court referred to above she gets absolute rights and her alienations cannot be questioned by the plaintiffs.

8. The learned Counsel for the appellants-plaintiffs sought to place reliance on the judgment of the learned single Judge of this Court reported in *Bade*

Sriramulu Vs. Chedalavada Prabhakara Rao, Minor by Ch. Venkaiah and Others, . It is a case where a female was holding the property without any pre-existing right in the property and she was not even a limited owner and her half share did not enlarge into absolute estate. The facts of that case have no application to the present case.

9. In the light of my above discussion I hold that the plaintiffs have failed to establish their right to suit property and for partition and that the defendants have perfected their title to the suit property by adverse possession. I also hold that the suit is barred by limitation. The trial Court has rightly dismissed the suit. I do not find any reasons to interfere with the findings of the trial Court.

10. In the result the appeal is dismissed. There will be no order as to costs.