
(2007) 08 AP CK 0030
In the Andhra Pradesh High Court
Case No : SA No. 173 of 1998

Annepu Vykunta Rao and Another	Vs	APPELLANT
Annepu Vasudeva Rao and Others		RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Citation : (2008) 1 ALD 819

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : A.B. Lalitha, for D. Ramalinga Swamy, for the Appellant; M.S.R. Subrahmanyam, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The Court on 22.7.1998 made the following order:

Heard, in view of the substantial questions of law raised in ground Nos. 9(a) to (f) of the Memorandum of Appeal, the second appeal is admitted.

It may be appropriate to have a look at the said grounds specified as "a" to "f" under ground No. 9, which are as hereunder:

(a) Whether under law, the ages stated in the cause title of the deposition form before the oath was administered, amounts to a statement on oath and evidence or admissions on the part of the plaintiffs ?

(b) Whether the positive evidence of PWs. 1 and 2 given on oath about the ages of the plaintiffs can be ignored in view of same ages noted in the deposition form under law ?

(c) Whether under law, self-serving statements made in Exs.A4 to A6, B1 and B3, B19 to B23 that there was a prior partition to support the validity of the alienations made thereunder bind the minors under law?

(d) Whether the appellate Court committed a grave error of law, in not deciding,

whether the compromise decree was collusive, fraudulent and was not for the benefit and the interest of the minors ?

(e) Whether the appellate Court committed a grave error of law in not presuming that when no property was given to the minors under the compromise decree and the compromise resulted in no benefit to the minors, prima facie, the decree was not for the benefit and in the interest of the minors ?

(f) Whether the appellate Court committed a grave error of law, in not considering the most relevant facts that no property was given to the minor plaintiffs in the compromise decree that there was no averment about any prior partition or allotment of any share to the minors either in the compromise decree or in the written statement and that these facts lead to irresistible conclusion that there was no collusion, fraud in the compromise decree due to the gross negligence and misconduct of the guardian, who entered into such compromise as held in *Ratnam Chettiar and Others Vs. S.M. Kuppuswami Chettiar and Others*, .

2. Smt. A.B. Lalitha representing Sri D Ramalingaswamy, the Counsel for the appellants had taken this Court through the respective pleadings of the parties and the evidence available on record and would point out that the well-considered findings recorded by the Court of first instance were reversed by the appellate Court without properly appreciating the oral and documentary evidence available on record. The learned Counsel also would point out that from the findings recorded by the trial Court, it is clear that the maternal uncle had not acted with due diligence and as a next friend of minors the said maternal uncle acted with gross negligence and in fact no properties had been given to these minors at the relevant point of time and the alleged prior partition also had not been referred to in the compromise and when that being so the appellate Court totally erred in recording the findings contra to the findings, which had been recorded by the Court of first instance. The Counsel also placed strong reliance on certain decisions in this regard.

3. Per contra, Sri Ram Mohan had taken this Court through the findings recorded by the appellate Court and in the light of the points for consideration decided by the appellate Court the learned Counsel would maintain that in fact there was prior partition and at the relevant point of the time the father was alive and bona fide compromise was entered into and the mere fact that the prior partition was not referred to in the compromise may not seriously alter the situation especially in the light of the fact that prior leave of the Court had been obtained and the Court on application of mind permitted the parties to effect compromise that too in the interest of the minors then and when that being so unless there are compelling reasons and proof relating to the gross negligence on the part of the next friend or guardian in conducting the litigation the compromise decree cannot be avoided. The Counsel would also maintain that even otherwise the suit is barred by limitation and in any view of the matter in the light of the well considered findings recorded by the appellate Court no substantial questions of

law as such would arise for consideration in this second appeal and hence the same is liable to be dismissed.

4. Heard the Counsel on record and perused the oral and documentary evidence available on record, the findings recorded by the Court of first instance and also the findings recorded by the appellate Court and also the substantial questions of law on the strength of which the second appeal had been admitted, which had been already specified supra.

5. The parties hereinafter referred to for the purpose of convenience as "plaintiffs" and "defendants" as shown in OS No. 32 of 1991 on the file of the Court of Subordinate Judge, Raj am, Srikakulam District. The said suit was originally instituted as OS No. 6 of 1991 on the file of the Court of Subordinate Judge, Srikakulam and the relief prayed for in the said suit was for declaration that the decree of OS No. 59 of 1976. On the file of the Court of Principal Subordinate Judge, Srikakulam obtained by the first defendant as collusive and fraudulent and not binding on the plaintiffs who were then minors and the partition of A to D schedule properties into 24 equal shares and put the plaintiffs into 14 such shares and for mesne profits and for other ancillary reliefs.

6. The suit was resisted by the defendants and in the light of the respective pleadings of the parties, the Court of first instance having settled the issues recorded the evidence of PWs.I to 3 and marked Exs.AI to A6 and DWs.I to 5 and Exs.BI to B23 and ultimately came to the conclusion that the prior compromise decree is not binding on the plaintiffs who were then minors since the next friend acted in gross negligence especially in view of the fact that no property as such was given at the relevant point of time and accordingly came to the conclusion that the plaintiffs are entitled to the preliminary decree and for other ancillary reliefs. The suit against D6 and D7 was dismissed with costs. Aggrieved by the same, the matter was carried by way of appeal, AS No. 67 of 1992 on the file of the Court of District Judge, Srikakulam and the appellate Court having framed the points for consideration at Para No. 12 proceeded to discuss with the points commencing from Para Nos. 13 to 21 and ultimately allowed the appeal. Aggrieved by the same, the second appeal had been preferred.

7. The averments made in the plaint in brief are as hereunder:

The plaintiffs, defendants 1, 4 to 6 are the sons, the second defendant is the wife and third defendant is the daughter of one Yerrayya; Yerrannaidu they are all joint family members; and defendants 4 to 6 divided from the joint family about 20 years prior to the filing of the suit. Since then the plaintiffs, Yerrayya, first defendant remained as joint family, which got ancestral properties described in the plaint "A" to "D" schedules. Since Yerrayya neglected to look after the plaintiffs, the 8th defendant styling himself as guardian of the plaintiffs who were minors in the year 1976 filed a suit for partition OS 57/76 against the first defendant, Yerrayya, of the suit properties. Subsequently, the 8th defendant colluded with the first defendant and Yerrayya and filed compromise petition in

that suit and items 1 to 3 of "A" schedule, were given to the first defendant and Yerrayya and the rest of the items were shown as sold to outsiders long back and no property was given to the plaintiffs under the said decree. The said decree was collusively obtained not for the benefit of the welfare of the plaintiffs under the said decree. The said decree was collusively obtained not for the benefit of the welfare of the plaintiffs, who were then minors. Therefore, the said decree is not binding on the plaintiffs and liable to be set aside. Meanwhile, Yerrayya died last year i.e., one year prior to filing of the suit. Prior to his death, Yerrayya gave away item No. 4 of "B" schedule in exchange to the seventh defendant; item No. 5 of "B" schedule was sold away to eighth defendant; item No. 2 of "B" schedule was sold to 9th defendant. The said alienations are not valid and binding on the plaintiffs. The plaintiffs are entitled to 14/24th share i.e., each 7/24th share in the suit schedule properties. The plaintiffs attained majority and they are aged 21 years and 19 years respectively. Hence, this suit is filed.

8. The second defendant filed written statement pleading that:

The plaintiffs are the sons of first wife of Annepu Yerrayya by name Annapurnamma who died in the year 1963; defendants 4 to 6 also are the sons of Yerrayya through his first wife, after the death of Annapurnamma Yerrayya married the second defendant, the first defendant and third defendant are son and daughters of Yerrayya through his second wife i.e., the second defendant; the tenth defendant representing the plaintiffs as guardian and next friend, filed OS 59/76 against their father and his son the first defendant born through his second wife i.e., the second defendant herein due to intervention of caste elders that suit was compromised between the plaintiffs represented by the tenth defendant and the father of the first defendant herein; the terms of compromise were accepted in toto and the decree was passed as per the terms of the compromise; the decree in OS No. 59/76 is valid and binding on the plaintiffs; defendants 1 to 3 and late Yerrayya have got properties in terms of the compromise; the plaintiffs 1 and 2 have also got properties; defendants 1 to 3 have title, possession and enjoyment over the properties given under compromise decree entered into between the plaintiffs 1 and 2 and his father the first defendant; plaintiffs 1 and 2 are estopped from contending that no properties were given to them; there are no joint family properties remained, after the compromise decree in OS No. 59/76; the plaintiffs 1 and 2 are no longer the members of joint family and they have nothing to do with the properties of late Yerrannaidu; the defendants 1 to 4 alone have got title and possession and enjoyment over the items 1 to 4 of plaint "A" schedule and "B" schedule dry lands are not in their possession and enjoyment; the defendants have got title and possession on the entire "C schedule properties, the "D" schedule properties belong to the defendants alone; late Yerrayya executed two registered settlement deeds for 0.75 cents of wet land in favour of his second wife who is second defendant; his daughter 3rd defendant and they are in possession and enjoyment of those said lands; the plaintiffs have attained majority long back; the first plaintiff is aged 26 years; second plaintiff is aged 23

years and they are married and living independently by alienating the above mentioned properties; the tenth defendant who is inimically disposed of towards the family of late Yerrannaidu and defendants 1 to 3 filed the suit, OS No. 31/ 83 on the basis of a forged agreement dated 4.4.1982 for Rs. 24,000/- for specific performance of the agreement of sale for recovery of possession and for the return of earnest money of Rs. 13,000/-. He also filed a petition IA 368/83 in the said suit for appointment of a Receiver; that petition was dismissed on 22.11.1983. Hence, the tenth defendant bore grudge against the defendants 1 to 3 having failed in all his attempts to grab the property and to harass them he filed the suit on 7.12.1983 and the tenth defendant and defendants 2 to 6 the plaintiffs 1 and 2 only with a view to harass the defendants 1 to 3 filed the suit; the second defendant also filed a suit against the defendant Nos. 4 to 6 and plaintiffs 1 and 2 for grant of permanent injunction; the present suit is also barred by limitation as they kept quiet all these years and the suit is not maintainable; the plaintiffs are estopped from claiming the properties and hence the suit is liable to be dismissed with exemplary costs.

9. Defendants 7 to 9 filed written statement with the following averments:

They are bona fide purchasers of the lands of Annepu Yerrannaidu and his divided sons for a valid consideration in good faith; Annepu Yerrannaidu during his lifetime executed registered exchange deed dated 2.6.1982 and gave the lands mentioned in the registered exchange deed to D7 for exchange of lands belonging to D7; it was a bona fide transaction and the plaintiffs have no right to question the same entered into by Yerrannaidu and his son and D7; the eighth defendant has purchased properties from late Yerrannaidu and his minor sons under a registered sale deed dated 24.3.1977 for Rs. 1,500/- and he also purchased lands under a registered sale deed dated 25.5.1978 for Rs. 1,000/- and further he also purchased land under a registered sale deed dated 14.7.1981 for Rs. 1,855/- from fourth defendant and his minor son and he also purchased thatched and tiled houses for Rs. 3,500/- from fourth defendant and his sons; he is a bona fide purchaser of all those properties for a valuable consideration; the 9th defendant purchased properties from late Yerrannaidu and D1 and D2 under a registered sale deed dated 16.7.1980 for Rs. 1,100/- and he is a bona fide purchaser for a valuable consideration; the plaintiffs have no right to question the said transaction; the tenth defendant filed O.S. No. 31/82 on the file of Principal Sub-Judge, Srikakulam against the 7th defendant; the tenth defendant instigated the plaintiffs 1 and 2 and on the evil advice of the defendants 4 to 6, defendants 7 to 10 are unnecessarily impleaded in the suit only to harass them; the suit is bad for misjoinder of parties and the suit is liable to be dismissed with exemplary costs.

10. On the strength of these pleadings, the following issues were settled by the Court of first instance:

(1) Whether the age of the plaintiff stated in the plaint is correct ?

(2) Whether the compromise decree in OS No. 59/76 on the file of this Court is a collusive and not binding on the plaintiffs and whether it is not for the benefit of the plaintiffs ?

(3) What are the joint family properties liable for partition ?

(4) Whether the alienations in favour of the defendants 7 and 8 covered by the exchange deeds, dated 2.6.1972 with reference to 7th defendant are not binding on the plaintiffs ?

(5) Whether the alienations covered by the sale deeds dated 24.3.1977 and 25.5.1978 and 14.7.1981 are not binding on the plaintiffs ?

(6) Whether the sale of the thatched and tiled houses in favour of 5th defendant are not binding on the plaintiffs ?

(7) Whether the alienation covered by the sale deed dated 16.7.1980 in favour of 9th defendant is not binding on the plaintiffs ?

(8) Whether the defendants 4 to 9 are not necessary parties to the suit ?

(9) Whether the suit is barred by limitation ?

(10) To what mesne profits the plaintiffs entitled ?

(11) To what compensatory costs are defendants 1 to 3 and 7 to 9 entitled ?

(12) To what relief ?

11. The trial Court recorded the evidence of PWs.1, 2 and 3. PW.1 Annepu Vykunta Rao, PW.2 Annepu Ramaswamy and PW.3 Vavilapalli Alamanda and also recorded the evidence of DWs.1, 2, 3, 4, 5. DW1 Annepu Varahamma, DW2 Annepu Narsayya, DW3 Annepu Ramaswamy, DW4 Annepu Apparao, DW5 Annepu Krishnamurthy and further marked Exs.A1 to A6 and Exs.B1 to B23 and ultimately decreed the suit. The appellate Court at Para No. 12 framed the following points for consideration:

(1) Whether there was partition between the plaintiffs 1 and 2, the defendants 4 to 6, the sons of late Yerrannaidu through his first wife and late Yerrannaidu and the first defendant his son through his second wife D2, prior to filing of OS 59/76 is true and correct ?

(2) Whether this suit, OS No. 6/84 which was subsequently number as OS No. 32/91 is barred by limitation ?

(3) Whether the plaintiffs in this suit (OS No. 32/91) are not entitled for declaration that the decree in OS No. 59/76 is collusive, fraudulent and not binding on the plaintiffs and for partition and allotment of 14 out of 24 shares in the suit schedule properties and for other reliefs prayed for therein ?

(4) To what relief ?

12. The appellate Court recorded reasons in detail and reversed the decree and judgment of the Court of first instance, hence the present second appeal.

13. Ex.A1 is the certified copy of decree in OS No. 59/76 on the file of Subordinate Judge, Srikakulam, Ex.A2 is the certified copy of plaint in OS No. 59/76 on the file of Sub-Court, Srikakulam, Ex.A3 is the certified copy of plaint in OS No. 59/76 of Sub-Court, Srikakulam, Ex.A4 is the registered sale deed executed by Annepu Anandarao in favour of Boddepalli Ranganadham and others for Rs. 1,920/-. Likewise, Ex.A5 is the registered sale deed executed by Annepu Ananda Rao in favour of Annepu Ramarao and Paparao for Rs. 2,280/- and Ex.A6 is the registered sale deed executed by Annepu Ananda Rao and others in favour of Boddepalli Krishnamurthy for Rs. 1,860/-. Apart from these documentary evidence, the oral evidence referred to supra of PWs.1 to 3 had been recorded. Exs.B1 to B23 were marked. Ex.B1 is the registered settlement executed by Annepu Yerrayya in favour of Annepu Varahamma, Ex.B2 is the registration extract of sale deed executed by Seepana Venugopalarao in favour of Annepu Varahamma, Ex.B3 is the registered settlement deed executed by Annepu Yerrayya in favour of Annepu Annapurnamma, Exs.B4 to B12 are the land revenue receipts. Ex.B13 is the certified copy of order in IA No. 3 68/83 in OS 31/83 on the file of the Principal Sub-Court, Srikakulam, Ex.B14 is the certified copy of order in IA 869/83 in OS 199/83 of District Munsif Court, Rajam, Ex.B15 is the certified copy of decree in OS 199/83 on the file of District Munsif s Court, Rajam, Ex.B16 is the registered exchange deed executed by Annepu Yerrannaidu and another in favour of Annepu Narasayya, Ex.B17 is the certified copy of petition and order thereon in IA 885/83 in OS 204/83 of District Munsif Court, Rajam, Ex.B18 is the registered sale deed executed by Annepu Yeranna and others in favour of Annepu Kumaraswamy for Rs. 1,500/-, Ex.B19 is the registered sale deed executed by Annepu Ananda Rao and others in favour of Annepu Ramaswamy for Rs. 3,500/-, Ex.B20 is the registered sale deed executed by Annepu Neelayya in favour of Annepu Ramaswamy for Rs. 1,000/-, Ex.B21 is the registered sale deed executed by Annepu Ananda Rao and others in favour of Annepu Ramaswamy for Rs. 1,855/-, Ex.B22 is the registration extract of sale deed executed by Annepu Ananda Rao and others in favour of Raghupati Ananda Rao and Ex.B23 is the registered sale deed executed by Annepu Ananda Rao and others in favour of Kuna Apparao for Rs. 3,000/-.

14. The facts are reflected from the respective pleadings of the parties already had been referred to supra. Ex.A4 is the registered sale deed dated 26.8.1986 showing that the fourth defendant in the suit is one of the sons of Yerram Naidu on behalf of himself as guardian of his son executed the sale deed, wherein it had been mentioned that the land which was sold under the sale deed had fallen to his share in partition. Likewise Ex.A5 is the registered sale deed dated 11.7.1990 executed by the sixth defendant another son of late Yerrannaidu and the wife of fourth defendant and her minor son. Ex.A6 is yet another sale deed executed on 13.6.1988. Ex.B1 is the registered settlement deed dated 17.9.1982 executed by Yerrannaidu in favor of his second wife, the second defendant in the

suit wherein it was mentioned that the properties settled in Ex.B1 had fallen to his share. Ex.B2 is yet another registered settlement deed executed by late Yerrannaidu during his lifetime in favour of his daughter, the third defendant in the suit. Ex.B19 is the registration sale deed dated 25.5.1978 executed by D4 to D5 and the plaintiffs represented by Ananda Rao, the fourth defendant in the suit, wherein it was specified that the property was sold therein had fallen to their share in the partition. Ex.B5 is the sale deed executed by the fifth defendant son of Yerrananaidu, wherein it was specified that the property, which had been fallen to his share in partition was being alienated. Ex.B21 is the registered sale deed dated 14.7.1981 executed by D4 to D6 and plaintiffs represented by D4 as guardian. Ex.B22 is the registration extract of the sale deed dated 11.6.1980 executed by D4 and D5 and the minor son of D5 and the minor son of Yerrannaidu D6 and the plaintiffs, who were minors at that time represented by the fourth defendant. Ex.B23 is the registered sale deed dated 11.6.1975 executed by D6 and the plaintiffs 1 and 2 and D6, the plaintiffs, who were minors represented by fourth defendant. These documents clearly go to show that there was prior partition. No doubt in the compromise recorded in OS No. 59 of 1976 on the file of the Court of Subordinate Judge, Srikakulam, no properties as such had been given to the present plaintiffs in this suit, minors then as can be seen from Ex.A1. It is pertinent to note that the maternal uncle, who represented these minors at the relevant point of time obtained leave of the Court for recording compromise. It is no doubt true that prior partition had not been referred to and this is made a ground of attack in the present litigation. The mere fact that the said fact was not referred to in the compromise would not seriously alter the situation for the reason that apart from the oral evidence of DWs.1 to 5, the voluminous documentary evidence placed Exs.B1 to B23 would amply establish the prior partition and Exs.B5 to B12 would also show the separate enjoyment of the properties. In the light of the same plea that the maternal uncle had not conducted the litigation in OS No. 56 of 1976 had not acted with diligence in protecting the interest of the minors cannot be accepted. The main ground is that the maternal uncle colluded with the father at the relevant point of time to the detriment of the interest of the minors in getting the said compromise recorded. Apart from these aspects of the matter, certain findings had been recorded relating to the age of the parties. Reliance was placed on the decision of the apex Court in Ratnam Chettiar and Others Vs. S.M. Kuppuswami Chettiar and Others, , wherein the apex Court at Para 19 observed as hereunder:

A partition effected between the members of the Hindu Undivided Family by their own volition and with their consent cannot be reopened, unless it is shown that the same is obtained by fraud, coercion, misrepresentation or undue influence. In such a case the Court should require a strict proof of facts because an act inter vivos cannot be lightly set aside.

When the partition is effected between the members of the Hindu Undivided Family which consists of minor coparceners it is binding on the minors also if it is

done in good faith and in bona fide manner keeping into account the interests of the minors.

Where, however, a partition effected between the members of the Hindu Undivided Family which consists of minors is proved to be unjust and unfair and is detrimental to the interests of the minors the partition can certainly be reopened whatever the length of time when the partition took place.

Where there is a partition of immovable and movable properties but the two transactions are distinct and separable or have taken place at different times, if it is found that only one of these transactions is unjust and unfair it is open to the Court to maintain the transaction which is just and fair and to reopen the partition that is unjust and unfair.

15. Reliance was also placed on the decision of the Division Bench of Nagpur High Court in Jaymohan Lakhmichand and Ors. v. Ranchoddas and Ors. AIR (33) 1946 Nag. 84 . Strong reliance was placed on the aspect of limitation on the decision of apex Court in Prem Singh and Others Vs. Birbal and Others, .

16. In the light of the clear and categorical findings recorded by the appellate Court while answering the points for consideration both on the aspect of the alleged gross negligence attributed to the maternal uncle, who acted as next friend of the minors at the time of entering compromise in OS No. 59 of 1976 and also on the aspect of limitation and the age of the parties, this Court is of the considered opinion that the appellate Court had taken into consideration the oral and documentary evidence available on record and further placed strong reliance on the voluminous documentary evidence, the recitals made therein especially in Exs.B1 to B3, B18 to B23 and recorded appropriate findings.

16.1 Hence, viewed from any angle, this Court is of the considered opinion that the decree and judgment made by the appellate Court do not suffer from any infirmity whatsoever and the said findings are hereby confirmed. It is needless to say that the second appeal is devoid of merit and the same shall stand dismissed. However, in view of the close relationship of the parties, the parties to the litigation shall bear their own costs.