

(1996) 02 AP CK 0007

In the Andhra Pradesh High Court

Case No : Appeal No's. 273 and 2235 of 1984

Bandi Subhash Reddy and Others

APPELLANT

Vs

K. Satyanarayana Reddy and Others

RESPONDENT

Date of Decision : 22-02-1996

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Evidence Act, 1872 — Section 91, 94

Citation : (1996) 3 ALT 691

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : P. Ramachandra Reddy, in A.S. 273/84 and K. Purshottam Reddy and M.R. Harsha, in A.S. 2235/84, for the Appellant; K. Purshottam Reddy and M.R. Harsha, in A.S. 273/84, for the Respondent

Final Decision : Allowed

Judgement

S.V. Maruthi, J.—These two appeals arise out of a judgment dated 1-8-1983 in O.S. No. 208 of 1983 on the file of the learned Subordinate Judge, Rangareddy District. In A.S. No. 273 of 1984, defendant Nos.1,2 and 7 are the appellants and in A.S. No. 2235 of 1984, the plaintiffs are the appellants.

2. The suit was filed by the plaintiffs for recovery of possession and partition of plaint A-1 and A-2 and plaint B and C schedule properties. Plaint A-1 schedule property consists of Acs.72-00 of land and plaint A-2 and B schedule properties consist of Acs.22-00 of land.

3. The brief averments of the plaint are as follows:

One Nawaz Reddy was the original owner of the plaint schedule properties. He died in 1947. Defendant No. 3 is the first wife and widow of late Nawaz Reddy. Defendant No. 2 is the daughter of Nawaz Reddy by his fourth wife Manikyamma. The said Manikyamma died long ago. Defendant No. 1 is the husband of defendant No. 2. Defendant No. 7 is the father-in-law of defendant No. 2 and

father of defendant No. 1 Defendant No. 4 is the adopted son of defendant No. 3 and the plaintiffs are the sons of defendant No. 4. After the death of Nawaz Reddy, there was a litigation between defendant No. 3 and the mother of defendant No. 2, Manikyamma. The litigation ended in favour of defendant No. 3 holding that defendant No. 3 succeeded to be the first wife of late Nawaz Reddy. Pursuant to the authorisation given by late Nawaz Reddy, defendant No. 3 adopted defendant No. 4 in 1953. After the adoption of defendant No. 4 on 23-4-1956, defendant No. 3 filed a petition before the Revenue Department for transfer of rights of the watandar in favour of defendant No. 4. In 1961, after a contest between defendant No. 3 and defendant No. 2., the Revenue Department recognised defendant No. 4 as the watandar in respect of the watan held by late Nawaz Reddy. In 1958, there were misunderstandings between defendant No. 3 and the mother of the plaintiffs. Defendant No. 3 arranged a matrimonial alliance to defendant No. 2 with defendant No. 1 whose father (D-7) agreed to give all possible help to defendant Nos. 3 and 4 If defendant No. 2 is married to his son i.e. defendant No. 1, for which he bargained a large dowry of Acs. 72-00 of land and a house and also the Kotwali watan (village Munsif's hereditary post to defendant No. 1), pursuant to which a written contract was entered into between the father of defendant No. 1 and defendant Nos. 3 and 4 on 9-2-1960 specifying that the property covered by the contract was given as dowry to defendant No. 2, pursuant to which a sale deed was executed in favour of defendant No. 1. Under the sale deed Acs. 72-00 of land was sold for a sum of Rs. 8,000/- of which the plaintiffs came to know only before the filing of the suit. There was no legal necessity to sell the land covered by plaintiff A-2 schedule i.e. Acs. 72-00 in favour of defendant No. 1. No consideration was paid under the sale deed. The property is worth not less than Rs. 60,000/- in the year 1960. It comprised of Acs. 47-00 of fertile wet land and Acs. 25-00 of fertile dry land. In 1960 it was fetching an income of Rs. 15,000/- net per year. However, the sale deed was executed for a consideration of Rs. 8,000/-. Though the sale deed refers to a consideration of Rs. 8,000/-, it was virtually a gift towards the dowry contracted on an earlier agreement dated 9-2-1960. Reference to dowry in the sale deed is only to avoid the patent illegality in executing the document. In Andhra Pradesh, the Dowry Prohibition Act was introduced on 21-2-1958 by Andhra Pradesh Act 1 of 1958. Therefore, giving and taking of dowry is an offence under the said Act and hence the sale deed dated 25-4-1960 executed pursuant to the agreement dated 9-2-1960 is void and therefore the defendants do not get any title to the property. The joint family of the plaintiffs was solvent and there was no necessity at all to sell Ex.A-1 schedule properties for a small sum of Rs. 8,000/-.

4. In view of the above, the sale deed executed in favour of defendant No. 1 is void and is liable to set aside. Due to differences in the family, defendant Nos. 3 and 4 neglected to maintain the plaintiffs, their sisters and their mother. Seeing the attitude of defendant No. 4, the first plaintiff demanded for a partition and also for recovery of possession of A-1 schedule properties. The defendants did not agree for the same. Hence, the plaintiffs filed the suit for partition and for

setting aside the sale deed dated 25-4-1960 and for mesne profits, etc.

5. Defendant No. 1 filed a written statement contending that defendant No. 3 had no authority to adopt a son to Nawaz Reddy as there was neither consent of Nawaz Reddy nor of the other male agnates or the co-widow Manikyamma. Therefore the adoption of defendant No. 4 is not valid and binding. Plaint A and B schedule properties belonged to late Nawaz Reddy. There was a bitter litigation between the mother of defendant No. 2 and defendant No. 3. Having realised the follies committed by her, she has decided to get defendant No. 2 married suitably. After the death of Nawaz Reddy and in view of the litigations, the estate of Nawaz Reddy was heavily burdened with liabilities incurred by defendant No. 3. Therefore, defendant Nos. 3 and 4 intended to sell away a part of the property left by Nawaz Reddy to discharge the liabilities and to meet the marriage expenses of defendant No. 2. The relations and well-wishers of defendant Nos. 3 and 4 suggested that instead of selling away the property to others, it should be given to the person who marries defendant No. 2 and takes the responsibility of paying the existing debts to the tune of Rs. 10,000/- and meeting the marriage expenses of defendant No. 2. Defendant No. 7 came forward at the instance of well-wishers and accepted the offer. Under those circumstances, defendant No. 7 paid off Rs. 15,000/- to defendant Nos. 3 and 4 towards the marriage expenses of defendant No. 2 and he should pay a further sum of Rs. 8,000/- and get the sale deed executed. It was also agreed that defendant No. 7 should discharge the liabilities of defendant Nos. 3 and 4 to the extent of Rs. 10,000/-. Thus, a total sum of Rs. 33,000/- available as the total consideration for the execution of the sale deed is neither illegal nor void and defendant No. 7 spent Rs. 80,000/- towards the improvements of Survey Nos. 516, 518, 533 and 452; Rs. 18,000/- for digging a well in Survey Nos. 516 and 518; Rs. 4,000/- for construction, by raising walls with stone in Survey No. 516 and for flour mill; Rs. 12,000/- for improving the well situated in Survey No. 533; Rs. 10,000/- for improvement by deepening and widening of the well in survey No. 452; Rs. 40,000/- for construction of house and two kottams in Survey No. 518. Pursuant to the agreement of sale, defendant Nos. 1, 2 and 7 were put in possession of the plaint A-1 schedule lands and they were continuously enjoying the same without interruption openly to the knowledge of the plaintiffs and defendant Nos. 3 and 4. The sale deed executed in his favour is valid and binding not only on behalf of defendant Nos. 3 and 4 but also on the plaintiffs. Further, the title was perfected by adverse possession and the suit is liable to be dismissed.

6. Defendant No. 2 also filed a written statement. The averments are more or less similar to the averments made by defendant No. 1. Defendant No. 4, father of the plaintiffs, filed a written statement contending that the adoption of defendant No. 4 by defendant No. 3 is valid and binding and defendant Nos. 5 and 6 supported the case of the plaintiffs and filed a written statement accordingly. A written statement was also filed by the guardian on behalf of defendant Nos. 5 and 6. Defendant No. 7 also filed a written statement which is more or less similar to the averments made by defendant No. 1 in his written

statement. On the basis of the pleadings, the Subordinate Judge framed the following issues:

"(1) Whether the alleged adoption of the 4th defendant by 3rd defendant is true and valid?

(2) Whether the sale deed in favour of the first defendant by defendants 3 and 4 is not supported by consideration and is not binding on the plaintiffs?

(3) xxx

(4) xxx

(5) xxx

(6) xxx

(7) To what relief?

Additional issues framed on 28-9-1978:

(1) What is the effect of the agreement dated 9-2-1960 and the sale deed dated 25-4-1960?

(2) Are the defendants 1, 2 and 7 estopped from denying the adoption of the 4th defendant?

Another additional issue No3 framed on 21-8-1981:

(1) Whether the defendants 1 and 7 are entitled for the improvements made to the lands purchased by the first defendant, after its purchase viz., Rs. 80,000/- as mentioned in para 8 of the written statement?"

The plaintiffs examined seven witnesses in support of their case and filed Exs. A-1 to A-17 whereas the defendants examined six witnesses and filed Exs. B-1 to B-23. On the basis of the material on record, the learned Subordinate Judge held that the adoption of defendant No. 4 by defendant No3 is true and valid, that the sale deed Ex. A-1 by defendant Nos. 3 and 4 in favour of defendant No. 1 is supported by consideration to the extent of Rs33,000/-. However, the sale deed is void on account of the fact that under the Andhra Pradesh Dowry Prohibition Act of 1958, payment of dowry is prohibited and since Ex. A-1 is executed for the purpose of payment of dowry, the sale deed in its entirety is void and does not confer any title or interest in the property on defendant Nos. 1, 2 and 7. The properties left by Nawaz Reddy were the joint family properties and they are liable to be partitioned and defendant Nos. 1, 2 and 7 are not estopped from denying the adoption of defendant No. 4 and that defendant Nos. 1 and 7 are not entitled for the improvements, if any, made to the four survey numbers of plaintiff A-1 schedule land and the plaintiffs are entitled to mesne profits in a sum of Rs. 5,000/-. He also held that Nawaz Reddy died in the year 1947 i.e. subsequent to the coming into force of the Hindu Women's Rights to Property Act of 1937, since Under Sections (2) of the said Act, when a Hindu governed by any School

of Hindu law other than the Dayabagh or by customary law dies having at the time of his death an interest in the Hindu Joint Family property, his widow shall, subject to the provisions of sub-section (3) have in the property the same interest as he himself had and under sub-section (3) she gets a limited interest i.e. life interest Since the adoption of defendant No. 4 by defendant No. 3 was to her late husband, Nawaz Reddy, defendant No. 3 got only half share in the property and defendant No. 4 got remaining half share in the properties, left by Nawaz Reddy u/s 3 of the Hindu Women's Rights to Property Act, 1937. Though under the Act of 1937, defendant No. 3 has only life interest, after passing of the Hindu Succession Act, the life interest became absolute and therefore she acquired absolute ownership of her half share in the properties left by late Nawaz Reddy. u/s 14 of the Hindu Succession Act of 1956, defendant No. 4 was also in possession of the suit properties along with defendant No. 3 by the time the Act of 1956 came into force. Therefore, the plaintiffs got only 1/3 rd share in the half share of his father defendant No. 4 in the properties left by late Nawaz Reddy and defendant No. 3, widow of late Nawaz Reddy got half share and plaintiffs 1 and 2 and defendant No. 4 got each 1/6 th share. Since the sale deed under Ex.B-4 was void as the alienation made under it is prohibited u/s 4 of the Andhra Pradesh Dowry Prohibition Act of 1958 and since defendant No. 1 was in possession of the 1/6 th share of defendant No. 4 and half share of defendant No. 3 defendant No. 1 perfected his title to that extent by adverse possession. Therefore, the 1/6 th share of the plaintiff A-1 schedule property of defendant No. 4 and further half share of defendant No. 3 in the plaintiff A-1 schedule property of defendant No. 4 is not available for partition. Holding as above, the learned Subordinate Judge decreed the suit for partition and recovery of possession in respect of the properties excluding 1/3 rd share of defendant No. 3 and 1/6 th share of defendant No. 4.

7. Defendant Nos. 1,2 and 7 filed the appeal challenging the findings relating to the adoption and the sale deed Ex.B-4 executed by defendant No. 3 to (sic. and) defendant No. 4 as void on the ground that it is executed in violation of the Andhra Pradesh Prohibition Act of 1958. They have also challenged the finding of the learned Subordinate Judge in disallowing their claim for improvements in respect of the four survey numbers, namely, the Survey No. 516, 518, 533 and 452. They have also challenged the finding directing them to pay mesne profits in a sum of Rs. 5,000/- and enquiry into the future mesne profits."

8. The plaintiffs filed an appeal questioning the correctness of the shares determined by the learned Subordinate Judge. The parties are arrayed as in Appeal No. 273 of 1984.

9. The main argument of the learned counsel for the appellants is that the finding of the learned Subordinate Judge that the sale deed Ex. B-4 is void on the ground that it is executed in violation of Section 4 of the Dowry Prohibition Act of 1958 cannot be sustained as the learned Subordinate Judge himself found that the sale deed was supported by consideration to the extent of an amount of

Rs33,000/-. Therefore, there should have been a decree either for refund of the amount to the extent of Rs. 33,000/-, or since the sale deed is supported by consideration, the suit should have been dismissed. The learned counsel also submitted that the finding relating to adoption is not supported by the evidence and is liable to be set aside. He also submitted that Ex.B-4 was executed since the 3rd appellant-Defendant No. 7 advanced an amount of Rs. 15,000/- as marriage expenses and discharged the promissory note paying Rs. 10,000/- and an amount of Rs. 8,000/- was paid before Sub-Registrar. Therefore, to that extent, the sale deed is valid and binding on the respondents.

10. The learned counsel for the respondents submitted that the Subordinate Judge proceeded on the assumption that the Hindu Women's Right to Property Act of 1937 was made applicable to the Hyderabad State whereas in fact, the Act was extended to Hyderabad State only in the year 1954. By an amendment, the Act was made applicable to agricultural lands. Since Nawaz Reddy died in 1947, Respondent No. 4 was adopted by respondent No. 3 in 1953 and since the adoption relates back to the date of the death of late Nawaz Reddy, the property of Nawaz Reddy devolved on respondent No. 4 in 1953. Therefore, respondent No.3 did not have any right in the coparcenary property and therefore, the finding that she has half share in the property belonging to Nawaz Reddy is contrary to law. Respondent No. 3 is entitled only for maintenance from out of the coparcenary property. The property of Nawaz Reddy devolved on respondent No. 4 in 1953 in its entirety and if respondent No. 4 is the sole coparcener who is entitled to the property of late Nawaz Reddy, respondents 1 & 2 are entitled to 1/3 rd share each in the property belonging to late Nawaz Reddy. Therefore, the entire property belonging to late Nawaz Reddy which devolved on respondent No. 4 is available for partition and respondent No. 3 is not entitled to any share. The learned counsel also submitted that the findings that appellants 1,2 and 3 have perfected their title by adverse possession also cannot be sustained as there is no evidence in support of the same. It is also contended that there is absolutely no evidence that Ex. B- 4 sale deed is supported by consideration for an amount of Rs. 33,000/-. The sale deed recites that the consideration of Rs. 8,000/- was paid and no oral evidence can be adduced to say that the consideration paid was not Rs. 8,000/- but Rs. 33,000/-.

11. As regards the contention of the learned counsel for the appellants that the adoption of respondent No. 4 is not valid and binding is concerned, I do not see any substance in the said contention. The learned Subordinate Judge exhaustively considered the evidence on record and gave a finding relying on the evidence. He also gave cogent and convincing reasons in support of his finding. The learned counsel could not point out any infirmity in the finding so as to reverse the same or interfere with the same. I, therefore, reject the contention of the counsel in this regard.

12. As regards the contention that the sale deed is supported by consideration at least to the extent of Rs 33,000/- and therefore, the learned Subordinate Judge

ought to have dismissed the suit of the respondents 1 and 2 to that extent also cannot be accepted in view of the fact that the sale deed recites that Rs. 8,000/- was paid as consideration and except the oral evidence, there is no other evidence in respect of the finding. Since the recital in the sale deed cannot be controverted by oral evidence, I reject the contention of the learned counsel. However, since the sale deed categorically says that Rs. 8,000/- was paid as consideration and since it is found that the sale deed is void as it was executed in violation of Section-4 of the Dowry Prohibition Act, respondents 1 and 2 are liable to return Rs. 8,000/- paid as consideration to appellant Nos.1,2 and 3. They are also liable to pay interest at 12% per annum till the payment of the same from the date of the suit.

13. As regards improvements made by appellants 1, 2 & 3 in respect of Survey Nos. 516, 518, 533 and 452, respondents 1 and 2 have not disputed the improvements made in those survey numbers. Therefore, the appellants are entitled to these survey numbers. Therefore, while passing the final decree, the trial Court is directed to allot these four survey numbers to appellants 1, 2 and 3.

14. The next contention to be considered is whether the 3rd respondent is entitled to any share in the property of late Nawaz Reddy. Prior to 1937 under Hindu Law governed by Mitakshara School of Law, a Hindu widow is entitled to maintenance from out of the joint family property of her husband/ Coparcener. In 1937 the Hindu Women's Right to Property Act was passed bringing about a change in the rights of a woman. It confers for the first time a share in the joint-family property equivalent to that of her husband though she is not entitled to claim partition or file a suit for partition, when partition of joint family property is effected she is entitled to a share. The Act was brought into force in the whole of the territory of India on 14th April, 1937. However, Hyderabad State being an independent State it was not made applicable to the State of Hyderabad. For the first time in 1952 by the Hyderabad (Application of Central Act) Act, 1952, the Hindu Women's Right to Property Act was applied to the State of Hyderabad. Thereafter, in 1954 by Act XXII of 1954, the Hindu Women's Right to Property Act was extended to Agricultural properties. Till such time, the Act was not applicable to the State of Hyderabad. By the time Nawaz Reddy died in 1947, though the Act was enforced in the territory of India other than the State of Hyderabad, it was not in force in the State of Hyderabad. Respondent No. 3 adopted respondent No. 4 in 1953 and the adoption relates back to the date on which Nawaz Reddy died i.e. in 1947. By virtue of the adoption, the property belonging to late Nawaz Reddy devolved on respondent No. 4. It is only after the adoption by respondent No. 3 to late Nawaz Reddy, the Hindu Women's Right to Property Act was brought into force in Hyderabad State. Therefore, respondent No. 3 is not entitled to any share in the joint family property of Nawaz Reddy except that she has a right of maintenance. Therefore, the learned Subordinate Judge is not right in holding that by virtue of the Hindu Women's Rights to Property Act of 1937, respondent No. 3 is entitled to half share in the property belonging to late Nawaz Reddy. If respondent No. 3 is not entitled to a share in

the property belonging to late Nawaz Reddy, the whole property devolved on respondent No. 4. If the property of Nawaz Reddy devolved on respondent No. 4, respondents 1 and 2 are entitled to 1/3 rd share each in the property of respondent No. 4. Consequently, the entire property belonging to respondent No.4 is available for partition. However, the sale deed was executed in 1960 to which respondent No. 4 was a party. Ever since the execution of the sale deed, appellants 1 to 3 are in possession and enjoying the same and there is no dispute about the possession of the appellants in the suit schedule property. They have therefore, perfected their title to the extent of the share of respondent No. 4. In other words, out of Acs.72-00 covered by Ex.B-4, respondents 1 and 2 are entitled to partition of 2/3 rd share each; In respect of the balance, appellants 1, 2 and 7 have perfected their title by adverse possession.

15. Accordingly; the appeal filed by the appellants i.e. A.S.No. 2235/1984 is allowed to the extent indicated above. The appeal filed by the appellants in A.S. No. 273/1984 is also allowed to the extent that while passing the final decree the Subordinate Judge is directed to allot Survey numbers 516, 518, 533 and 452 to the appellants. Each party to bear his own costs.