
(2013) 04 AP CK 0109

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 1179 of 2000 and A.S.M.P. No. 3221 of 2012

Bashyam Anjamma and Another

APPELLANT

Vs

Narra Satyanarayana and four Others

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 26, 3(f)
Civil Procedure Code, 1908 (CPC) — Section 11
Hindu Succession Act, 1956 — Section 6, 6(1), 6(3), 6(5)

Citation : (2013) 5 ALD 788 : (2013) 4 ALT 445

Hon'ble Judges : N.R.L. Nageswara Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.R.L. Nageswara Rao, J.—Defendant Nos. 2 and 4 in O.S. No. 287 of 1983 on the file of the Court of Senior Civil Judge, Narsaraopet, are the appellants herein. The suit was filed for partition of the schedule property and future profits.

2. The allegations in the plaint go to show that the 1st defendant is the mother and D. 2 to D. 6 are the sisters of the plaintiff. Late Narra Pitchaiah was the father of the plaintiff and the Manager of the family till 1962 when he became mentally unsound. Thereafter, the 1st defendant assumed management. As there was no other elder member, she asked the 2nd defendant and her husband Veeraiah to assist her and accordingly they came and lived in the family of Narra Pitchaiah. The husband of the 2nd defendant gained influence over the 1st defendant and taking unsoundness of Narra Pitchaiah fabricated some documents and one such document is family settlement deed. As per the said deed, Item No. 1 and Ac. 0.30 cents of house site in Item No. 12 were settled in favour of the 2nd defendant and Ac. 4.00 cents in Item No. 2 was settled in favour of the 4th defendant, who is the 2nd wife of Veeraiah. The said document is not valid and the Defendant Nos. 2 and 4 will not get any rights. Defendant Nos. 2 and 4 filed O.S. No. 182 of 1983 on the file of the Court of District

Munsiff, Sattenapalli, against the plaintiff and others for permanent injunction. While so, Narra Pitchaiah died on 29.03.1975. The plaintiff and the defendants succeeded to the estate of Pitchaiah and they are entitled to plaint "A" and "B" schedule properties. Late Pitchaiah has got half share in the schedule properties and that share has to be divided between the plaintiff and D1 to D6. Hence the suit.

3. The 1st defendant has filed a written statement contending that the allegation that Narra Pitchaiah was a man of unsound mind and the husband of the 2nd defendant gained control is not correct. On 19.05.1957 late Narra Pitchaiah executed a family settlement deed conveying the Ac. 12.33 cents in Item No. 1 of A schedule to the 2nd defendant, Ac. 4.00 cents which is a part of Item No. 4 to the 3rd defendant, Ac. 4.00 cents in part of Item No. 2 to the 4th defendant and similar extent in Item No. 3 in favour of the 5th defendant. A declaration was also given by the 1st defendant under Land Ceiling Act. The lower Tribunal did not accept the above transfers and in C.R.P. No. 390 of 1979 the High Court has allowed the appeal upholding the gift in favour of D2 to D5 by their father and excluded the said extents. Therefore, the plaintiff is not entitled to include those properties in the suit schedule. The plaintiff is not entitled to future profits or possession.

4. Defendant Nos. 2 and 4 have filed a separate written statement contending that the 2nd defendant is the eldest daughter of Narra Pitchaiah, and she was married to Veeraiah, who is no other than the brother of the 1st defendant in 1955. As Pitchaiah became sick and not able to attend the cultivation, the 2nd defendant and her husband were brought by Pitchaiah. It was also pleaded that Item No. 1 and also Ac. 0.30 cents in the Northern Portion of Item No. 12 were given towards "Pasupu-kunkuma" to the 2nd defendant in 1955, by which date the plaintiff was not born. The 2nd defendant is, therefore, the absolute owner of the property by adverse possession. It was further pleaded that due to ill-health of the 2nd defendant, her husband married the 4th defendant in 1970. The defendants have no objection for partition of the estate excluding the properties given to D2 to D4 and also the property settled under the settlement deed on 19.05.1957. The plaintiff was born on 19.01.1959 and he has no right to question the above arrangement. The Land Ceiling Tribunal upheld the dispositions; the suit is barred by time and is liable to be dismissed.

5. The 3rd defendant also filed a written statement on similar lines of D1 and D2. The 6th defendant filed a memo adopting the written statement of D3. The 5th defendant filed a written statement reiterating almost all the allegations raised by the other defendants and denying the right of the plaintiff for partition.

6. On the basis of the above pleadings, the following issues are framed for trial:-

1) "Whether the plaintiff is entitled for partition if so what are the properties liable for partition and for what share?

2) Whether the plaintiff is entitled for future profits?

3) Whether the Court fee paid is correct?

4) Whether the family settlement executed by Late. N. Pitchaiah is binding on the plaintiff?

5) Whether the Judgment of High Court passed in C.R.P. No. 300/70 became final and binding on the plaintiff?

6) To what relief?

7. On behalf of the plaintiff, PWs. 1 to 11 were examined and marked Exs. A1 to A29. On behalf of the defendants, DWs. 1 to 8 were examined and marked Exs. B1 to B5. Exs. X1 to X5 were also marked. After considering the evidence on record, the Court below decreed the suit of the plaintiff with regard to the "A" schedule property except Item No. 5 and the suit with regard to the other property was dismissed. Aggrieved by the said judgment, the present appeal is filed.

8. Pending disposal of the Appeal, A.S.M.P. No. 3221 of 2012 was filed to receive additional memorandum of grounds of appeal challenging the finding of this Court that the order in C.R.P. No. 390 of 1979 is not binding of the plaintiff, as he is not a party.

9. A memo was also filed stating that the 2nd respondent died and Legal Representatives were already on record.

10. At the time of arguments, the learned counsel for the appellants contended that in view of the amendment to Section 6 of the Hindu Succession Act, 1956 by the Act 39 of 2005, daughters are also coparceners and they are entitled for equal shares and since no final decree for partition or partition of the properties was effected after the death of Pitchaiah, the above amended law has to be applied.

11. The points that arise for consideration are:-

1) Whether the defendants are entitled for the protection and for the partition as per the Act 39 of 2005?

2) Whether the Court below was not right in ignoring the settlement deed dated 19.05.1957 which is marked as Ex. B1?

3) Whether the plaintiff is estopped from denying finality of the order passed in the Land Reforms cases, in view of the order of the High Court in C.R.P. No. 390 of 1979?

4) Whether the judgment and decree passed by the Court below is legal and sustainable?

POINTS:

12. The learned counsel for the appellants strongly contends that in view of the

amended Act 39 of 2005, daughters are treated as coparceners of the father and as the suit for partition is pending by the date of the said Act, the shares allotted by the Court below are not correct and the benefit of the Act should be given to the appellants. On the other hand, the contention of the learned counsel for the plaintiff is that since Pitchaiah died in the year 1975, his succession has opened and devolution of his share by virtue of notional partition has already been decided and consequently Pitchaiah along with the plaintiff will be entitled to two equal shares and, therefore, the contention of the appellants is not correct.

13. Before considering this aspect, it is useful to refer to the Section 6 of the Hindu Succession Act (39 of 2005) (for short "the Act"), which reads as follows:-

6. Devolution of interest in coparcenary property:

1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint family governed by the Mitakshara Law, the daughter of a coparcener shall,-

- a) by birth become a coparcener in her own right in the same manner as the son;
- b) have the same rights in the coparcenary property as she would have had if she had been a son;
- c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and-

- a) the daughter is allotted the same share as is allowed to a son;
- b) the share of the pre-deceased son or predeceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter; and
- c) the share of the pre-deceased child of a predeceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of

the partition, shall be allotted to the child of such pre-deceased child of the predeceased son or a pre-deceased daughter, as the cause may be.

Explanation:- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

5) Nothing contained in this Section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation:- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a Court.

14. Evidently, u/s 6 sub clause 5 of the said Act, according to the learned counsel for the appellants, the only exception is to a partition which has been effected before 20th December 2004 under a deed of partition, which was duly registered and also a partition finally effected by a decree of the Court below. He also drawn the attention of this Court to the provisions u/s 6(3) of the Act, whereunder it was held for determination of the share of Hindu father who dies after the commencement of the Act, the notional partition is taken into consideration and, therefore, according to him the theory of notional partition cannot be accepted and even if Pitchaiah died in the year 1975, still the benefit of Act 39 of 2005 has to be extended.

15. In this connection, he has referred to a decision of this Court rendered by me and reported in R.V. Padmavathi (Died) and K. Pramila Suhasini Devi (Sri G. Suresh as the General Power of Attorney Holder of 2nd Petitioner, as per Court Order dt. 25-3-05 in C.M.P. No. 25678/03) (17th Respondent is transposed as Appellant No. 2 and shown as per Court Order dt. 25-3-2005 in C.M.P. No. 25676/03 and 25678/03) Vs. Gangarapu Sudarsana Chowdary (Died) and Others and contends that the notional partition considered by the Court is not proper in view of the provisions of Section 6(3) and Section 6(5) of the Act. He also incidentally relied on a decision reported in Ganduri Koteswaramma and Another Vs. Chakiri Yanadi and Another, whereunder when a suit was filed during the life time of the father and when he died and the final decree proceedings are still pending, the shares were determined for the daughters as per Act 39 of 2005. This decision, I feel can easily be distinguished on facts since in that suit the father was a party to the suit and subsequently he died. There is no doubt about the proposition of law that when the final decree proceedings were pending, it is not a case of total partition coming to a close and the bar u/s 6(5) of the Act cannot be denied. But, evidently, it is to be taken into consideration that under proviso to Section 6(3) of the Act, it is the share of the father, which will be given to him at a notional partition, has to be taken into consideration if he dies after the Amended Act. In fact, this proviso contained in Act 39 of 2005

is similar to the proviso prior to the amendment, whereunder it was specifically found that the theory of notional partition consequent on the death of the coparcener has to be taken into consideration. Therefore, it cannot be argued that except the partitions contemplated u/s 6(3) proviso and u/s 6(5) of the Act, all other partitions under the statute have not been recognized under the Act 39 of 2005. The decision of the Supreme Court relied on by the learned counsel for the appellants has no application since the father himself was a party to the suit and when such proceedings are pending, the question of notional partition cannot be applied. But, however, it is to be noted that the provisions of the Act 39 of 2005 are prospective only and not retrospective. It is difficult to accept the contention of the learned counsel for the appellants that notional partition as envisaged under the pre-amended Section 6 was given a go-by because Section 6(3) proviso also recognizes the theory of notional partition consequent on the death of the male coparcener after the amendment. In fact, it cannot be the intention of the legislature to unsettle all the devolutions of interests in coparcenary property prior to the amendment by virtue of notional partition.

16. In fact, there are series of judgments of the Madras High Court which will give a clear decision on this aspect. In R.V. Padmavathi (Died) and K. Pramila Suhasini Devi (Sri G. Suresh as the General Power of Attorney Holder of 2nd Petitioner, as per Court Order dt. 25-3-05 in C.M.P. No. 25678/03) (17th Respondent is transposed as Appellant No. 2 and shown as per Court Order dt. 25-3-2005 in C.M.P. No. 25676/03 and 25678/03) Vs. Gangarapu Sudarsana Chowdary (Died) and Others the judgment rendered by me, reliance was placed on the decision of the Supreme Court in Anar Devi and Others Vs. Parmeshwari Devi and Others, , whereunder the theory of notional partition was considered. There is an exhaustive decision of the Division Bench of the Madras High Court reported in Smt. Bagirathi and Others Vs. S. Manivanan and Another, . It is useful to extract Paras 13, 14 and 15 of the said judgment which reads as follows:-

13) A careful reading of Section 6(1) read with 6(3) of the Hindu Succession (Amendment) Act clearly indicates that a daughter can be considered as a coparcener only if her father was a coparcener at the time of coming into force of the amended provision. It is of course true that for the purpose of considering whether the father is a coparcener or not, the restricted meaning of the expression "partition" as given in the explanation is to be attributed.

14) In the present case, admittedly the father of the present petitioners had expired in 1975. Section 6(1) of the Act is prospective in the sense that a daughter is being treated as coparcener on and from the commencement of the Hindu Succession (Amendment) Act, 2005. If such provision is read along with Section 6(3), it becomes clear that if a Hindu dies after commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property shall devolve not by survivorship but by intestate succession as contemplated in the Act.

15) In the present case, the death of the father having taken place in 1975, succession itself opened in the year 1975 in accordance with the existing provisions contained in Section 6. If the contention of the petitioners is accepted, it would amount to giving retrospective effect to the amount to giving retrospective effect to the provisions of Section 6 as amended in 2005. On the death of the father in 1975, the property had already vested with Class-I heirs including the daughters as contemplated in the un-amended Section 6 of the Act. Even though the intention of the amended provision is to confer better rights on the daughters, it cannot be stressed to the extent of the holding that the succession which had opened prior to coming into force of the amended Act are also required to be re-opened. In this connection, we are also inclined to refer to the decision of Sundarambal and Others Vs. Deivanaayagam and Others, (Sundarambal and others Vs. Deivanaayagam and others). While interpreting almost a similar provision, as contained in Section 29A of the Hindu Succession Act, as introduced by the Tamil Nadu Amendment Act 1 of 1990, the learned single Judge had made the following observations:-

14. ... Under sub-clause (1), the daughter of a coparcener shall become a coparcener in her own right by birth, thus enabling all daughters of a coparcener who were born even prior to 25th March, 1989 to become coparceners. In other words, if a male Hindu has a daughter born on any date prior to 25th March, 1989, she would also be a coparcener with him in the joint family when the Amendment came into force. But the necessary requisite is, the male Hindu should have been alive on the date of the coming into force of the Amended Act. The section only makes a daughter a coparcener and not a sister. If a male Hindu had died before 25th March, 1989 leaving coparcenary property, then his daughter cannot claim to be a coparcener in the same manner as a son, as, on the date on which the Act came into force, her father was not alive. She had the status only as a sister-a-vis her brother and not a daughter on the date of the coming into force of the Amendment Act...

17. In fact, this judgment and other judgments of the High Court and Supreme Court were exhaustively dealt by the Madras High Court in S. Seshachalam Vs. S. Deenadayalan and Others, wherein the Court held that if a Hindu dies prior to the Act 39 of 2005, the devolution can only be by the theory of notional partition and not otherwise.

18. Touching on this aspect, there is no other judgment of this Court delivered by Division Bench. Therefore, in view of the decision of the Full Bench of this High Court in M. Subbarayudu and Others Vs. The State, this Court has to follow the Division Bench of the Madras High Court on the principle of Stare decisis. Therefore, in view of the above circumstances, I find that I am not able to agree with the contention of the learned counsel for the appellants that the Act 39 of 2005 is to be applied and on the contrary, I hold that the notional partition, which was recognized prior to the amendment of Section 6 of the Act consequent on the death of a male coparcener is applicable and since Pitchaiah died in the

year 1975, his notional share has to be taken into consideration.

19. According to the case of the appellants, Pitchaiah has executed the settlement deed Ex. B1 on 19.01.1957, and the Court below did not consider this settlement deed on the ground that it was not proved by examining any of the attestors and also taking into consideration that possession is not proved by defendant Nos. 2 to 6. In fact, the approach of the Court below on this aspect is not correct. It is the specific case of the plaintiff that Pitchaiah was not able to manage the property because of his unsoundness of mind and he brought D2 and her husband Veeraiah to his house to assist in managing the affairs of the family. The allegations in the plaint go to show that the 2nd defendant and her husband along with the other defendants manipulated the settlement deed by influencing Pitchaiah and the said settlement deed, said to have been executed by late Pitchaiah, is sham, nominal, illegal, fabricated and antedated. Therefore, the allegation clearly goes to show that the execution of the settlement deed is not seriously disputed and it was obtained taking advantage of the control over Pitchaiah by the defendants. Unless, there is a specific denial of the execution of the gift deed, the requirement of calling of one of the attestors on the said document is not required and the burden is on the plaintiff, who challenges the same as being nominal and sham and ante-dated to establish the same. The nature of allegation with regard to the execution of a sham and nominal document clearly indicates that it was executed, but it was never intended to be acted upon. Consequently, the Court below has not properly appreciated the pleadings and discarded the gift deed on the premise that no attestor was examined. I have no hesitation to come to a conclusion from the pleadings that execution of the gift deed was not specifically denied and the burden is on the plaintiff to prove that it was sham or nominal. The plaintiff, who comes to the Court, has to confine the pleadings to a particular fact and unlike the defendants, in a suit, there cannot be inconsistent pleadings on behalf of the plaintiff to be considered. The omnibus pleading of fabrication, nominal nature, sham, antedated are not pleas which are open to the plaintiff to be considered since all of them are inconsistent and the plaintiff in the suit cannot try to make out a case by such inconsistent pleadings. Therefore, I hold that the approach of the Court below is not correct. The deed was executed even before birth of plaintiff.

20. The Court below has not properly considered the factum of possession. It is not the case of the plaintiff that he has been in possession of the property. In fact, the suit itself was filed for possession and therefore merely because for some years the name of Pitchaiah was considered in the Revenue records, it cannot be said that the settlement deed Ex. B1 is not proved or not acted upon.

21. The question is as to whether the settlement deed was acted upon by Pitchaiah or his family members. In fact, it is not in dispute that the family comes under the provisions of the A.P. Land Reforms Act, 1 of 1973 and was holding more than the ceiling limit and a declaration was filed by the 1st defendant representing the family and incidentally by the 2nd defendant and her

family members. It is also not in dispute that in the declaration filed by the 2nd defendant and her family, the extent of Ac. 12.27 guntas which is shown as Item No. 1 of the schedule was considered to be her property by virtue of the settlement deed. It is an admitted fact that this Court in C.R.P. No. 390 of 1979 has directed that this extent to be excluded from the holding of the 1st defendant since in C.C. No. 2453 of 1975, the said land was included in the holding of the family of D. 2 by virtue of the verification report. Therefore, it is quite clear that the alleged gift deed Ex. B1 was considered by this Court and it was excluded from the holding of the family of the 1st defendant and it was included in the holding of the family of the 2nd defendant. It cannot be disputed that by virtue of that exclusion, the family of the 1st defendant has gained the benefit and the extent of holding has been reduced and consequently the extent of the surrender of the land was also diminished. Having taken advantage by the family of the 1st defendant, it cannot be allowed to say that still it is the property of the joint family.

22. The lower Court has also erred on this aspect by holding that the plaintiff is not a party to the proceedings before the Land Reforms Tribunal. It is to be noted that Section 3(f) of the Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, reads as follows:-

The "family unit" means-

- i) in the case of an individual who has a spouse or spouses, such individual, the spouse or spouses and their minor sons and their unmarried minor daughters, if any;
- ii) in the case of an individual who has no spouse, such individual and his or her minor sons and unmarried minor daughters;

23. The family includes the minor son and a declaration of Will can be filed on behalf of the minor son also. Therefore, when the 1st defendant is representing the "family unit" it includes the plaintiff, who was a minor at the time of filing of the declaration, as such it cannot be said that the plaintiff is not a party to the proceedings in the declaration filed by the 1st defendant. Further, from the evidence on record after the remand to the lower Tribunal it is the plaintiff who has attended before the Land Reforms Tribunal and has knowledge of the proceedings and he never challenged that the exclusion of the gifted property in favour of the 2nd defendant is not legal. If really he wanted to avoid the binding nature of the order of this Court, he should have agitated the same. Therefore, any final order passed under the Act including the item No. 1 of the property given to the 2nd defendant is equally binding on the plaintiff. Therefore, the lower Court has taken an erroneous view on this aspect also.

24. Even otherwise, a decision rendered by the Land Reforms Tribunal is final and conclusive, it cannot be agitated in the Civil Court as per Section 26 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and Rules 1974, which reads as follows:-

Save as otherwise provided in this Act, no order passed or proceeding taken by an officer or authority under this Act shall be called in question in any suit or application and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer or authority in pursuance of any power conferred by or under this Act.

25. As per the amended provision of Section 11 sub clause VIII of Civil Procedure Code, even if a decision is rendered by an authority of limited jurisdiction, it will operate as *res judicata* and binding on the parties. It cannot be denied that the Land Reforms Tribunal, under the scheme of the Act was discharging the judicial functions. In this connection, it is useful to refer to a decision reported in *Pinka Dhanrjuna Rao and Another Vs. State of A.P. and Others*, wherein it was held that Land Reforms Tribunal comes within definition of the Court. Even otherwise discharge of all the functions by the Tribunal is of quasi judicial in nature determining the rights of the parties and by virtue of explanation VIII to Section 11 Civil Procedure Code, even if the Tribunal is having limited jurisdiction, still the decision rendered by it operates as *res judicata*.

26. In this connection, it is useful to refer to the decision of the Apex Court reported in *Sulochana Amma Vs. Narayanan Nair*, wherein it was held that:-

The expression "the Court of limited jurisdiction" in Explanation VIII is wide enough to include a Court whose jurisdiction is subject to pecuniary limitation and other cognate expressions analogous thereto. Therefore, Section 11 is to be read in combination and harmony with Explanation VIII. The result that would flow is that an order or an issue which had arisen directly and substantially between the parties or their privies and decided finally by a competent Court or tribunal, though of limited or special jurisdiction which includes pecuniary jurisdiction, will operate as *res judicata* in a subsequent suit or proceeding, notwithstanding the fact that such Court of limited or special jurisdiction was not a competent Court to try the subsequent suit. The issue must directly and substantially arise in a later suit between the same parties or their privies.

27. It is also useful to refer to a decision of Allahabad High Court reported in *Cholar Vs. Ram Pyare LAWS (ALL) 1979-10-33*, wherein, it was held that when a decision with regard to the validity of the document and title was rendered by the competent authority under U.P. Consolidation of Holdings Act, it was held to be binding in a subsequent Civil Suit.

28. The finality of the decision given by the Tribunal being *res judicata*, the plaintiff is bound by the said decision by this Court in C.R.P. No. 390 of 1979. Accordingly, the points are answered.

29. Accordingly, the Appeal Suit is allowed in part and while allowing application for consideration of the additional points for additional grounds, the 2nd defendant being owner of Item No. 1 of the A schedule property, it shall be excluded from partition and rest of the decree of the Court below is confirmed. Accordingly, the Appeal Suit is allowed in part. Each party is directed to bear its

own costs. Consequently, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.