
(2014) 01 AP CK 0128
In the Andhra Pradesh High Court
Case No : L.P.A. No. 154 of 2002

Bobbala Kondamma and Others	Vs	APPELLANT
Siddireddy Rami Reddy (died) and Others		RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Hindu Succession Act, 1956 — Section 14 14(1) 14(2) 14(3)

Citation : (2014) 6 ALD 634 : (2014) 6 ALD(Cri) 634 : (2014) 5 ALT 454

Hon'ble Judges : M.S.K. Jaiswal, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This Letters Patent Appeal is filed against the judgment, dated 18.12.2001, rendered by a learned Single Judge of this Court in Appeal No. 979 of 1990. The appeal, in turn, arose out of the judgment and decree, dated 06.11.1989, passed by the Court of the Subordinate Judge, Nandyal, in O.S. No. 118 of 1987. The defendants in the suit are the appellants and the sole plaintiff is the respondent. The respondent died during the pendency of the appeal and his legal representatives were brought on record.

2. The respondent filed the suit for declaration of his title in respect of the suit schedule properties and for recovery of possession thereof from the appellants. He stated that the original owner of the properties was one Mr. Siddireddy Vengalreddy, S/o. Ramireddy. Vengalreddy married Ramakka, but they have no issues. Vengalreddy's father, Ramireddy, had a brother, by name, Sivanagi Reddy, who had a son, by name, Narayana Reddy, the father of the respondent. In other words, Narayana Reddy is the cousin brother of Vengalreddy. It was stated in the plaint that Vengalreddy executed a Will on 05.11.1918 (Ex. A.1) bequeathing all his properties in favour of his cousin brother Narayana Reddy i.e., father of the respondent, however, by creating life interest in favour of his

wife Ramakka in respect of items 2, 6 and 7 of the plaint schedule and the vested remainder in respect of those items was created in favour of Narayana Reddy. A recital was made in Ex. A.1 to the effect that the gold and silver ornaments shall be divided between Ramakka and Vengamma, sister of Vengal Reddy, in equal shares.

3. The respondent pleaded that after the death of Vengalreddy, Narayana Reddy took possession of the properties through his father and at that stage, Ramakka filed O.S. No. 257 of 1919 in the Court of the District Munsif, Nandyal, against Narayana Reddy and Vengamma, for declaration to the effect that the Ex. A.1 Will executed by her husband is a forged document and not valid. The suit is said to have ended in a compromise whereunder Ramakka admitted the validity of the Ex. A.1 Will, and in addition to items 2,6 and 7 of the plaint schedule, she was conferred with life interest in respect of other items also and that a provision was made for division of the properties equally between herself and Narayana Reddy. A compromise decree, dated 19.03.1920 (Ex. A.3), is said to have been passed and that thereafter, a deed in terms of the compromise decree was executed.

4. Ramakka executed a Gift Deed, dated 19.07.1974, in respect of items 1 to 4 of the plaint schedule in favour of the 1st appellant and another Gift Deed, dated 23.07.1994, in respect of items 5 to 7 of the plaint schedule in favour of the 2nd appellant. Thereafter, the 1st appellant sold item 1 to the appellants 3 and 4 through a Sale Deed, dated 27.06.1986 and on 21.04.1986, he sold item 3 in favour of the 5th appellant. The respondent pleaded that none of these documents are valid, since Ramakka did not have absolute rights over the properties. According to him, Section 14(1) of the Hindu Succession Act, 1956 (for short "the Act") does not apply to the facts and the arrangement provided for under the compromise decree or the documents executed in pursuance thereof would attract Section 14(2) of the Act.

5. The suit was opposed by the appellants. They have put the respondent to strict proof of the facts pleaded by him, including the one, as to genuinity of the Will Ex. A.1. They pleaded that assuming that Ex. A.1 Will is genuine, it is superceded by the arrangement between Ramakka and Narayana Reddy through the compromise decree, dated 19.03.1920 (Ex. A.3) and a partition deed, dated 16.07.1920 (Ex. A.4). They pleaded that under Ex. A.4, separate items were allocated to Ramakka, may be with life interest, and by operation of Section 14(1) of the Act, her limited rights under Ex. A.4 got enlarged into absolute ones, inasmuch as she was alive till 18.07.1987. They have pleaded that Ramakka has every right to transfer the properties covered by Ex. A.4, as she desired. The trial Court dismissed the suit on a finding that the case is governed by Section 14(1) of the Act and that Ramakka has every right to alienate the properties covered by Ex. A.4. Learned Single Judge of this Court, however, reversed the decree passed by the trial Court and decreed the suit.

6. Sri C.V. Mohan Reddy, learned senior counsel for the appellants, submits that beyond any pale of doubt, the case is governed by Section 14(1) of the Act. He

contends that though Ramakka was conferred with limited rights in respect of the plaint schedule properties under Ex. A.4, such rights stood enlarged to absolute rights, by operation of Section 14(1) of the Act. He submits that the learned Single Judge has taken a totally untenable view on facts and law and has reversed the well-considered judgment passed by the trial Court.

7. Sri O. Manohar Reddy, learned counsel for the respondent, on the other hand, submits that Narayana Reddy became the absolute owner of items 1, 3, 4 and 5 of the suit schedule straight away and of items 2, 6 and 7, after the death of Ramakka. He contends that the arrangements under Ex. A.3 and Ex. A.4 are totally different and independent of Ex. A.1 and viewed from that angle, they are regulated by Section 14(2) of the Act. He submits that Narayana Reddy, the father of the respondent, was not under any obligation to maintain Ramakka and the disposition made under Ex. A.4 does not attract Section 14(1) of the Act.

8. Both the learned counsel for the parties have extensively relied upon the judgment of the Supreme Court in V. Tulasamma and Others Vs. Sessa Reddy (Dead) by Lrs., . Apart from that, several precedents were cited by them.

9. The trial Court framed the following issues for consideration:

1) Whether the plaintiff has locus standi to institute the suit in view of the suit notice having been given by (1) the plaintiff (2) S. Venkataramanareddy (3) Siddireddy Venkatasubbareddy?

2) Whether the will dt. 5.11.1918 relied upon by the plaintiff is true, valid and binding on the defendants?

3) Whether the compromise decree in O.S. No. 257/1919 relied upon by the plaintiff is valid and executable?

4) Whether the registered deed dated 16.2.1920 relied upon by the plaintiff in para 9 of the plaint creates any rights in favour of the plaintiff's grand father and whether the said rights have devolved upon the plaintiff?

5) Whether late Ramakka was enjoying the plaint schedule properties are governed by Section 14(3) of the Hindu Succession Act, 1956 as alleged by the plaintiff or u/s 14(1) as alleged by the defendants?

6) Whether the gift deed dated 12.7.1984 and 23.7.84 are true and valid and binding on the plaintiff?

7) Whether late Ramakka perfected her title by adverse possession also?

8) Whether the plaintiff is estopped in law from questioning the gift deed dt. 19.7.84 and 23.7.84?

9) Whether the several sale deeds in favour of defendants 3 to 8 mentioned in the plaint are not binding on the plaintiff?

10. On behalf of the respondent, P.Ws. 1 and 2 were examined and Exs. A.1 to

A.13 were filed. On behalf of the appellants, D.Ws. 1 to 9 were examined and Exs. B.1 to B.8 were filed. The suit was dismissed. A.S. No. 979 of 1990 filed by the respondent was allowed.

11. The points, that arise for consideration in this appeal, are as to:

- 1) Whether the arrangement made under Ex. A.4 can be treated as independent of Ex. A.1 Will executed by Vengal Reddy?
- 2) Whether Narayana Reddy, the father of the respondent, was under obligation to maintain Ramakka?
- 3) Whether the disposition made under Ex. A.4 is governed by Sub-section 1 or Sub-section 2 of Section 14 of the Act?

POINT NO. 1:

12. Not only all the seven items of the plaint schedule, but also certain other items were held by Sri Vengal Reddy. He did not have any children through his wife Ramakka. The plea of the respondent was that Vengal Reddy executed a Will in favour of his cousin brother, Narayana Reddy. It is necessary to mention that by the time the Will dated 05.11.1918 was executed, Narayana Reddy was minor. His father, Siva Nagi Reddy, was taking all the steps on his behalf. The plea of the respondent is that on the death of Vengal Reddy, Siva Nagi Reddy took possession of all the items covered by Ex. A.1 for and on behalf of his son, Narayana Reddy, the legatee.

13. Ramakka seriously disputed Ex. A.1 Will, and in fact she was entitled to do so. Not a single item of the property was bequeathed to her. She was only conferred with life interest in respect of three items of immovable property and was given half of the gold and silver articles. The other half has been bequeathed to her sister-in-law, Vengamma. Ramakka filed O.S. No. 257 of 1919 in the Court of District Munsif, Nandyal, with a prayer to declare that Ex. A.1 Will is a fabricated one, and not valid in law. A compromise petition was filed in that suit by both the parties i.e., Ramakka and Narayana Reddy represented by their father. Ex. A.2 is the compromise petition and Ex. A.3 is the decree. A perusal of Ex. A.3 discloses that the parties agreed to divide all the properties covered by Ex. A.1 equally between Ramakka and Narayana Reddy. If that were to have been the arrangement, there would not have been any complication whatsoever. Even while conferring absolute rights upon Narayana Reddy in respect of half of the properties covered by Ex. A.1 Will, vested remainder was created in him in the properties that were allotted to the share of Ramakka. In other words, Ramakka had only life estate in the extents, allotted to her share under Ex. A.4.

14. Specific reference was made to Ex. A.1 in Ex. A.4. But for the bequest made under Ex. A.1, there would not have been any occasion for execution of Ex. A.4 or for that matter, any basis for Narayana Reddy to claim rights over the properties held by Vengal Reddy. The inescapable conclusion, therefore, is that the arrangement made under Ex. A.4 is squarely referable to the disposition

made under Ex. A.1 Will executed by Vengal Reddy. The point is, accordingly, answered in the negative.

POINT NO. 2:

15. This aspect becomes vital in the context of application of Sub-section 1, as the case may be, of Sub-section 2 of Section 14 of the Act. It is only when limited rights are conferred in favour of a Hindu woman; in recognition of pre-existing obligation to maintain her, that such limited rights would get enlarged into absolute ones by operation. Therefore, the fulcrum for operation of Section 14 of the Act, in its entirety, would be the existence of obligation to maintain a Hindu woman.

16. The obligation to maintain a Hindu woman would be basically upon her parents, if she is unmarried and upon her husband, if married, and on the children, if the husband is no more. The persons outside the family, of which a Hindu woman is a member are hardly placed under obligation to maintain her, whether one goes by the mandate under Sasthric laws or under the modern law.

17. If a person on whom a Hindu woman is dependent, is alive, the right can certainly be enforced against him. Where, however, he is no more, any one who takes the property from the person who was under obligation to do so, incurs the liability to maintain the concerned woman. In other words, the property held by a person who was under obligation to maintain a Hindu woman is always burdened with that very obligation. A legal heir would not inherit such property nor a transferee would acquire the property otherwise than with the obligation. It is apt to refer to the following paragraph of the judgment of the Supreme Court in Tulasamma's case:

20. Thus, on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidents and characteristics of a Hindu woman's right to maintenance:

1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow.

2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e., it is a *jus in rem* and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil Court;

3) that the right of maintenance, is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for

her maintenance;

4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu Law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right;

5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance.

18. Therefore, Narayana Reddy came under obligation to maintain Ramakka, not because he is distantly related to her, but on account of the fact that he got the benefit of the estate of the husband of Ramakka. It was not out of any charity or benevolence that he made an arrangement under Ex. A.4 in favour of Ramakka. It is squarely and purely in recognition of his pre-existing obligation to maintain Ramakka, that he made the arrangement. The point is, accordingly, answered.

POINT NO. 3:

19. The distinction between Sub-sections 1 and 2 of Section 14 of the Act is rather subtle. The provisions cover two different situations altogether, and provide for substantial different legal consequences. The judgment in Tulasamma's case can be said to be a research document on Section 14 of the Act. Their Lordships took the view that Sub-section 2 of Section 14 of the Act cannot be treated as an independent provision and in a way, it is a proviso to Sub-section 1. Another aspect, which needs to be kept in mind, is that while Sub-section 1 deals with the arrangements made before the Act came into force, Sub-section 2 deals with those that are made thereafter.

20. Notwithstanding these noted distinctions, the best way of understanding the difference between these two provisions, is as to whether the arrangement contemplated under Sub-section 2 is otherwise than in recognition of the preexisting right to maintain a Hindu woman. If the answer is in the affirmative, the situation attracts Sub-section 1 and if it is in the negative, Sub-section 2 gets attracted. Though some observations were made giving a different indication in this behalf, none of them have doubted the binding nature of the ratio in Tulasamma's case. If that is taken as the basis, hardly there exists any doubt that the situation is covered by Sub-section 1 inasmuch as the arrangement under Ex. A.4 was in recognition of the pre-existing obligation of Narayana Reddy to maintain Ramakka.

21. Once it is held that Sub-section 1 of Section 14 of the Act gets attracted and Ramakka was alive by the time the Act came into force, her limited rights under

Ex. A.4 stood enlarged into absolute ones and she had every right to enjoy the same, according to her wishes. Thereby, the gifts made by her in favour of the appellants 1 and 2 under Exs. B.2 and B.6 become valid. Consequently, the sales effected by the 1st appellant in favour of the appellants 3 to 5 become valid.

22. The learned Single Judge, in his judgment, made an observation to the effect that for application of Section 14 of the Act, the Hindu woman must be in possession of the property. Hardly any doubt exists in this behalf, the reason is that Ramakka was enjoying the possession of the properties covered by Ex. A.4 and it is during her lifetime that she transferred them in favour of the appellants. Other observations were also made which run contrary to the principles laid down by the Supreme Court. The point is, accordingly, answered.

23. We, therefore, allow the Letters Patent Appeal and set aside the decree passed by the learned Single Judge. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in the appeal shall stand disposed of.