

(2014) 02 AP CK 0142

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1003 of 2011

Boddala Guramma and Another

APPELLANT

Vs

Boddala Ramamurthy (Died) and Boddala Bangaramma and Another

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : (2014) 5 ALD 390 : (2015) 1 ALT 624

Hon'ble Judges : Challa Kodanda Ram, J

Bench : Single Bench

Advocate : M.S.R. Subrahmanyam, for the Appellant; G. Venkateswara Rao Counsel for the Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Challa Kodanda Ram, J.—The appellants are the plaintiffs and the respondents are the defendants in the suit. Aggrieved by the judgment and decree, dated 25.04.2011, in A.S. No. 120 of 2006, passed by the Court of Special Judge for Trial of Cases under SCs & STs (PoA) Act-cum-Additional District Judge, Vizianagaram, confirming the judgment and decree dated 18.10.2006 passed by the Court of Senior Civil Judge, Vizianagaram in O.S. No. 16 of 2001, dismissing the suit for partition of plaint "A" and "B" schedule properties into 2 equal shares and for allotment of one such share to the plaintiffs.

2. The brief facts of the case, as emerged from the records, are that the 1st plaintiff is the wife and the 2nd plaintiff is the daughter of late Narayanappadu. Late Narayanappadu and the defendant are the sons of Pydithalli. Pydithalli is the absolute owner of the plaint schedule property and he died about 45 years back while he was in joint status with the husband of the 1st plaintiff and the defendant. Later, the husband of the 1st plaintiff and Rama Murthy continued in the same status and enjoyed the plaint schedule properties jointly. Narayanappadu died in the year 1981 leaving the plaintiffs behind him, as heirs. After the death of Narayanappadu the plaintiffs and defendant are enjoying the

suit schedule properties, having separate mess, for the sake of convenience. As the defendant is acting detrimental to the interest of plaintiffs, the plaintiffs raised a dispute before the elders for partition. The defendant agreed for the same but postponed for one or other reason. In the recent past, the defendant is trying to alienate the suit schedule property detrimental to the plaintiffs' interest. Hence, the plaintiffs filed the suit.

3. The defendant filed written statement stating that late Narayanappadu and the defendant partitioned their properties and they had been enjoying their shares separately. The said Narayanappadu executed a registered will dated 25.4.1981 in a sound and disposing state of mind. It is further stated that the suit for partition is not maintainable because there was already partition taken place between the defendant and his brother Narayanappadu and that the suit is also barred by time.

4. Basing on the pleadings, the trial Court framed the following issues for trial:

1. Whether the plaintiff is entitled for partition of "A" and "B" schedule?
2. Whether there was any earlier partition of the plaintiff schedule properties as alleged by the defendant in his written statement?
3. Whether the registered will 25.4.1981 said to have been executed by B. Narayanappadu in favour of the defendant is a true and valid document and binding upon the plaintiff?
4. Whether the suit is barred by limitation?
5. Whether the suit is not maintainable for the non-compliance with the Mandatory provisions of Rule 3 of A.P. Court Fee Act suit valuation Rules?
6. To what relief?

5. During the course of trial of the suit, P.Ws. 1 to 3 were examined on behalf of the plaintiffs and Exs. A.1 to A.4 documents were marked. On behalf of the defendant, D.Ws. 1 to D.6 were examined and Exs. B.1 to B.13 documents were marked on his behalf.

6. On appraisal of the evidence on record thereof, the trial court answered the issues 1 to 4 in favour of the defendant and against the plaintiffs.

Insofar as the issue No. 5 is concerned the same was answered in favour of the plaintiff and against the defendant. Ultimately, trial court having held issue No. 2 in favour of the defendant gave a categorical finding that Ac. 0.40 cents of land fell to the share of the plaintiffs. However, having held that the land of Ac. 0.40 cents fell to the share of the 1st appellant's husband, the trial court also found that by virtue of the registered will dated 25.4.1981 executed by the 1st appellant's husband in favour of the defendant. Hence, the said Ac. 0.40 cents of land came to be the property of the defendant. The trial court also having given the finding that there was only one partition and having come to the conclusion

that Ac. 0.40 cents fell to the share of the plaintiffs held that the suit for partition is not maintainable. The appellate court also confirmed the said finding of the trial court.

7. Sri M.S.R. Subrahmanyam, learned counsel for the appellants placing reliance on the finding of the trial court to the effect that the land of Ac. 0.40 cents fell to the share of the husband of the 1st appellant would contend that the court below ought to have at least held that this property belongs to the appellants. He would further submit that this Ac. 0.40 cents cannot be claimed by the defendant on account of the fact that the findings recorded by the trial court that the conditions which were part of the Will dated 25.4.1981 were not fulfilled. In that view of the matter, the defendant cannot have any claim over Ac. 0.40 cents of land in item No. 15.

8. On the other hand, Sri Venkateswara Rao Gudapati, learned counsel appearing for the respondents 2 and 3 would contend that the 1st plaintiff is the wife of the defendant's brother and both the brothers had inherited Ac. 0.80 cents of land from their father and the same was partitioned as Ac. 0.40 cents each. After partition, the 1st plaintiff's husband executed will dated 25.4.1981 and on account of the fulfillment of the conditions in the will, the property came to be that of the defendant and in that view of the matter, there is no property of his late father which is required to be partitioned. He would further submit that the trial court found that the property in dispute has already been partitioned and whether holding of Ac. 0.40 cents of land by the defendant is lawful or not and whether the conditions of the will were fulfilled or not were not the specific issues before the trial court and at any rate in a suit for partition these issues would not arise especially when there is a finding given by the trial court itself that there was no property that is required to be partitioned. Having considered the rival submissions, I do not see any reasons to interfere with the judgment of the appellate court confirming the judgment of the trial court. There are no substantial questions of law in the present appeal. While answering the issue No. 3, the trial court found that the Will dated 25.04.1981 is true and valid document and binding upon the plaintiffs. The grounds which have been raised in the appeal relate to the fulfillment of conditions of the Will which were in issue before the trial court. The issue with respect to discharge of the debts or otherwise was incidentally considered for the purpose of answering the genuineness of the will and that by itself cannot be relied on for the purpose of deciding whether the conditions set out in the will are fulfilled or not and what would be the consequences that flow for non fulfillment of the conditions set out in the will as parties never raised any issue with respect to these aspects. In that view of the matter, the substantial questions said to be arising from the judgment and decree of the appellate court do not require any consideration in the present appeal as they do not arise in the facts of the case.

9. The filing of second appeal is not automatic or routine. The appellants must show the substantial question of law involved in the appeal. If the findings are

not based on any evidence or perverse or recorded by both the courts below are on inadmissible evidence or admissible evidence is overlooked are some of the instances where the second appeal can be admitted. The appreciation of evidence by the courts below is not shown either to be perverse or contrary to law. Hence, the question of admitting the second appeal does not arise as there is no substantial question of law. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.