
(2005) 07 AP CK 0092
In the Andhra Pradesh High Court
Case No : SA No. 1320 of 2004

Chinna Ganganna

APPELLANT

Vs

Chinna Doddeppa and Another

RESPONDENT

Date of Decision : 05-07-2005

Acts Referred:

Citation : (2005) 6 ALD 198

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A. Hanmantha Reddy, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The sole defendant in O.S. No. 58 of 1993, on the file of the Court of Junior Civil Judge, Penukonda, is the appellant. He challenges the decree and judgment dated 23.8.2000, passed by the trial Court, which in turn was affirmed in A.S. No. 15 of 2000, by the Court of Senior Civil Judge, Penukonda, through the judgment dated 26.8.2004.

2. The parties are related to each other. The appellant and the first respondent are brothers. The second respondent is the wife of their brother late Sathenna @ Avulayappa.

3. The father of appellant and first respondent, by name Chinna Gangappa, and his brothers, Putla Gangappa and Sanna Gangappa, were sons of one Putla Sathenna. A partition took place in this large joint Hindu family, in the year 1964. We are not concerned with the shares allotted to other branches. The first respondent, the husband of the second respondent and the appellant were allotted properties- of schedule B, C and E, respectively, of the partition deed.

4. The respondents filed the suit, initially, for the relief of perpetual injunction against the appellant, alleging that he has been unauthorisedly interfering with the property that accrued to them in the partition, described as A & B schedule in

the suit. At a later stage, the plaint was amended, incorporating the relief of declaration that the second respondent is the exclusive owner of the plaint schedule properties. It was alleged that while the first respondent continued to be the exclusive owner and enjoyer of the plaint A schedule properties, plaint B schedule properties devolved upon the second respondent, consequent on the death of her husband Sathenna. They pleaded that Sathenna died issueless and the second respondent was suffering from the disease of leprosy, and that ever since the death of her husband, the second respondent was being attended to, and served by the family of the first respondent. It is alleged that coming to know that the second respondent had executed a will, proposing to bequeath her entire property in favour of the children of the first respondent, the appellant fabricated a will dated 15.1.1975, as though the plaint B schedule properties were bequeathed to the appellant and the first respondent, in equal shares. They pleaded that the said will is nothing but a concocted document. It was urged that the will is invalid, since it has totally excluded the second respondent, who was in dire need of assistance and maintenance.

5. The appellant filed a written statement, denying the allegations of the respondents. He stated that his brother Sathenna executed a will on 15.1.1975, on his own volition and free mind, bequeathing his properties to his brothers, equally. He pleaded that Sathenna did not make any provision in the will for the benefit of the second respondent, because he was confident that she would be taken care of by his brothers and legatees. It was also alleged that the first respondent, who married the sister of the second respondent, is behind this litigation and that he was trying to knock away the entire property left by late Sathenna.

6. The trial Court decreed the suit, holding that the first respondent was unable to explain the suspicious circumstances surrounding the will. The judgment of the trial Court was affirmed by the lower appellate Court.

7. Sri A. Hanumantha Reddy, learned Counsel for the appellant, submits that the Courts below did not examine the matter in the proper perspective. He submits that the will, Ex.B-3, was proved by examining the scribe, as well as the attester, and that there did not exist any suspicious circumstances around it. He contends that the legatees were none other than the natural brothers of the testator, who died issueless, and that he was confident that his wife, the second respondent, would be looked after by the legatees. He further contends that the second respondent has always a right, enforceable against the legatees, for her maintenance. He submits that the non-disposition of any property in favour of the second respondent, was on account of the fact that she was not in a position to administer it. Learned Counsel points out that the trial Court did not have the pecuniary jurisdiction to entertain the suit and that the suit was defective from mis-joinder of causes of action. He places reliance upon some precedents, in support of his contention.

8. Sri O. Manohar Reddy, learned Counsel for the respondents, on the other

hand, submits that Ex.B-3 was brought into existence by the appellant, with a mala fide intention. He contends that the appellant was not even in talking terms with the deceased Sathenna, and that the question of the latter reposing confidence in the former, in the matter of maintenance of the second respondent, does not arise. The learned Counsel points out that the falsity of the will is evident from the fact that certain items of property, which were not even acquired by Sathenna by the date of Ex.B-3, were included in it. He contends that the strongest possible circumstance that surrounded Ex.B-3 is that the only class-I legal heir of the testator who was suffering from a dreadful disease was not provided with any property. As regards the objection as to pecuniary jurisdiction, the learned Counsel submits that the suit was valued in the light of the relief claimed and taking into account, the prevalent value. So far as mis-joinder of causes of action is concerned, he submits that it was permissible to claim more reliefs than one, in relation to the same parties in the suit, particularly, vis-a-vis the same property.

9. As observed earlier, the suit was initially filed for the relief of perpetual injunction, and thereafter, it was amended to include the relief of declaration of title, in respect of B schedule property. On the basis of the pleadings before it, the trial Court framed the following issues:

- (1) Whether the plaintiffs have been in exclusive possession of suit schedule properties?
- (2) Whether the Court fee paid is correct and this Court has pecuniary jurisdiction?
- (3) Whether the plaintiff is entitled for permanent injunction as prayed for?
- (4) Whether this Court has pecuniary jurisdiction to try the suit?
- (5) Whether this Court has no pecuniary jurisdiction to entertain the suit?
- (6) Whether the plaintiff No. 1 is entitled for grant of permanent injunction with regard to suit schedule A property?
- (7) Whether the plaintiff No. 2 is entitled for declaration of title for B schedule property and also grant of permanent injunction for B schedule property?
- (8) Whether the will deed dated 15.1.1975 is true, valid and binding on the plaintiffs?
- (9) To what relief ?

10. The respondents were examined as PWs.1 and 2 respectively. They have also examined PW.3 and marked Exs.A-1 to A-8. The appellant was examined as DW-1. On his behalf, DWs.2 and 3 were also examined and Exs.B-1 to B-5 were marked. The trial Court dismissed the suit and the lower appellate Court affirmed the same.

11. The first contention of Sri A. Hanumantha Reddy, learned Counsel for the

appellant, is about the validity of Ex.B-3. Though the suit was filed for the relief of perpetual injunction in respect of A and B schedule properties and declaration of title in respect of B schedule properties, it ultimately emerged that the appellant did not make any claim, either of title or possession, vis-a-vis A schedule property. Therefore, the controversy in the suit was confined to B-schedule properties alone. The appellant pleaded that his brother late Sathenna executed the will, Ex.B-3, on 15.1.1975, in a sound health and free mind. Under Ex.B-3, the suit B schedule properties were bequeathed equally in favour of the appellant and the first respondent.

12. It hardly needs any emphasis that the propounder of a will has to prove it, in the same manner, as any other document, and in addition to that, lead further evidence to explain the suspicious circumstances, if any, that surround it. While the proof of document is almost in a settled pattern, viz., by examination of the scribe and attestors, the second aspect differs from case to case. The nature of suspicious circumstances that are required to be explained, would depend much upon the dispositions made in the will and the persons deriving benefit out of it. Though the testator of a will is at liberty to bequeath his properties according to his wish, exclusion of natural heirs, particularly those who depend upon, or entitled to be maintained by the testator, is prone to be treated as a strong circumstance.

13. The first respondent had taken necessary steps to prove Ex.B-3, by examining DWs.2 and 3, the scribe and attestor respectively. If Ex.B-3 were to be any other document, it can be said to have been proved with the examination of DWs.2 and 3, unless their evidence was not trustworthy. In fact, nothing is indicated to suggest that their evidence is unnatural. The only test, therefore, is about the ability of the appellant to explain the suspicious circumstances.

14. It is not in dispute that the second respondent is the only class-I heir of the deceased Sathenna. It is not even alleged that she has any income or property of her own. It is admitted that she was suffering from dreadful disease of leprosy and she was kept in a secluded place. Such a person needed greater amount of care and more resources, compared to the requirements to a hale and healthy person. Under the Hindu Adoptions and Maintenance Act, she has a right to be maintained by her husband. There was not even a suggestion that the relationship of Sathenna with the second respondent was in any way strained. The indication is otherwise. Under these circumstances, one hardly expects that late Sathenna who inherited vast property from the predecessors and added some more items to it; would leave his wife in a destitute condition. The explanation offered by the appellant that Sathenna was confident that his brothers would take care of his wife, is too wide and spacious to be accepted. In fact, if he was so affectionate towards his brothers, in the normal course of things, he would have created life interest in the properties in favour of his wife, and vested remainder, in favour of his brothers.

15. The judgment of the Supreme Court in Ramabai Padmakar Patil (D) through

LRs. v. Rukminibai Vishnu Vekhande 2003 (6) Sup 190 was in relation to a case, where the disposition under the will was not on the lines of succession. It was held that simply because the properties were not bequeathed in favour of any one, or all the legal heirs, the will does not become inoperative, if it is otherwise proved. The judgments of the Madras High Court in A. Ramesh Vs. A. Manohar Prasad and Others, and the Calcutta High Court in Chinmoyee Saha Vs. Debendra Lal Saha and Others, , are almost on the same lines. There is absolutely no second opinion about the proposition laid in the judgments referred to above. As observed earlier, the intensity of suspicion that surrounds a will, differs from case to case. It neither can be said as an absolute proposition that exclusion of legal heirs of a testator under the arrangement in the will is not a suspicious circumstance at all, or that simply because one of the legal heirs is excluded from the disposition, the testament has to be ignored as a whole.

16. Exclusion of legal heirs from the arrangement under a will does take place and such a factor cannot be treated as suspicious, at least in two circumstances. The first is where the relationship of the testator with the excluded legal heir was either strained, or he has been subjected to any hardship and inconvenience in the hands of such legal heir. The second is where the excluded legal heir is so well placed that he does not, in the opinion of the testator, need any property from him, compared to the status of the persons, in whose favour the disposition is made. Once it has emerged that the second respondent was the only class-I heir of late Sathenna, she was suffering from a severe disease, and did not incur any displeasure of her husband, her total exclusion in Ex.B-3 deserves to be viewed with utmost suspicion.

17. It is argued on behalf of the appellant that notwithstanding the disposition of property under Ex.B-3, in favour of the appellant and the first respondent, the second respondent has a right to claim maintenance against the legatees. For this, reliance is placed upon the judgment in Kamakshi Ammal and Another Vs. Krishnammal, The ratio of this judgment gets attracted in cases where the widow of a Hindu male does not dispute the will executed by her husband, and chooses to claim maintenance from the beneficiaries under the will. The challenge to a will by a widow, cannot be repelled on the ground that she can claim maintenance from the beneficiaries of the will.

18. There is another strong circumstance, which touches the genuinity of Ex.B-3. Late Sathenna was allotted the properties in schedule D in the partition. During his lifetime, Sathenna acquired items 16, 17 and 18 of the suit B schedule, through a sale deed, Ex.A-2, dated 17.4.1975. In Ex.B-3, which is dated 17.1.1975, reference is made to items 16, 17 and 18 of B schedule also. When the properties were acquired in April 1975, the question of inclusion of these items in a will said to have been executed in January 1975 does not arise. A meek attempt is made to explain this circumstance, by stating that even before the purchase under Ex.A-2, Sathenna held the said items of property. No evidence is adduced in this regard. Hence, this Court does not find any basis to

interfere with the concurrent findings of the Courts below as regards genuinity of Ex.B-3.

19. The second contention of the learned Counsel for the appellant is about the pecuniary jurisdiction of the trial Court. It is not in dispute that according to the value furnished by the respondents, the suit was within the pecuniary jurisdiction of the trial Court. The appellant came forward with the plea that if the actual value of the property is taken into account, the suit would be beyond the pecuniary jurisdiction of the trial Court. In this regard, it needs to be observed that it is always for the plaintiff to furnish the value of the property in the context of value of the suit and the relief claimed under it. It is not necessary that the value furnished in the suit must represent the actual price, which a willing purchaser is prepared to offer. It may be that the Court can take an objection as to the value furnished by the plaintiff. But a defendant in a suit cannot join an issue as to the very value of the property. In such a case, his effort is prone to be treated as a step in forum choosing, than defending the cause. Therefore, the objection cannot be sustained.

20. A further contention was advanced as to the mis-joinder of causes of action. As a basis for this plea, it was alleged that the relief claimed by the respondent No. 1 on the one hand, and the respondent No. 2, on the other, are different from each other and personal to them. It is also contended that the nature of relief claimed in respect of A schedule property is different from the one claimed as regards B schedule properties. Whatever may have been the justification of this plea, when the suit was pending, it ceases to be available, once it emerged that the appellant did not claim any right, vis-a-vis, A schedule property. The subject-matter of the suit got restricted to the one in respect of B schedule property alone. Therefore, it cannot be said that there was any mis-joinder of causes of action, to such a degree as to render the suit, not maintainable.

21. For the foregoing reasons, the second appeal is dismissed. There shall be no order as to costs.