
(2003) 09 AP CK 0060
In the Andhra Pradesh High Court
Case No : SA No. 489 of 1992

Chinthlapudi Narayana and Others

APPELLANT

Vs

Ramisetti Mahalakshamma

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Hindu Succession Act, 1956 — Section 15(1)
Limitation Act, 1963 — Article 65

Citation : (2003) 6 ALD 765 : (2003) 6 ALT 514 : (2003) 3 APLJ 263

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : G.V.L.N. Murthy, for the Appellant; E. Ajay Reddy, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Defendants in O.S. No. 96 of 1986 on the file of the Court of District Munsif, Huzurnagar are the appellants. For the sake of convenience, the parties would be referred to as they are arrayed in the Trial Court.

2. Plaintiff filed the suit for partition of the plaint schedule property (suit property) into five equal shares and for allotment of one such share to her, alleging that consequent on the death of her mother C. Anasuryamma about 15 years prior to the suit, she and defendants, who are her father, brothers and sister, became entitled to 1/5th share each in the suit property, which was the "Stridhana" property of her mother, and that fifth defendant, who was subsequently added as a party to the suit, is not entitled to a share in the suit property as he went away in adoption, and defendants, who were delivering about ten bags of paddy every year towards her share in the suit property, stopped giving her share from a few years, and so she does not wish to keep the suit property joint with the defendants. On behalf of defendants, first defendant, who is the father of the plaintiff and defendants 2 to 5, filed his written statement inter alia contending that since his wife Anasuryamma died about 20 years prior to the filing of the suit and since he has been in continuous

possession and enjoyment of the suit property in his own right, he became entitled to the same and so the plaintiff is not entitled to any share and in any event, the suit is bad for non-joinder of the fifth defendant, because his alleged being given away in adoption is not true. The other defendants adopted the written statement of the first defendant. On the basis of the pleadings, the Trial Court framed seven issues for trial. In support of her case, plaintiff examined herself as P.W.1 and three other witnesses as P.Ws.2 to 4 and marked Exs.A-1 to A-14. On behalf of defendants first defendant examined himself as D.W.1 and examined two other witnesses as D.Ws.2 and 3 and marked Exs.B-1 to B-3. Ex.X-1 was marked through a witness. The Trial Court held that the suit is not bad for non-joinder because fifth defendant, the brother of the plaintiff, who was not actually given away in adoption, was subsequently added as a party to the suit, and that Anasuryamma, the mother of the plaintiff, died about 20 years prior to the filing of the suit, but not about 15 years prior to the filing of the suit as contended by the plaintiff, and that the suit is properly valued for payment of Court Fee and it has pecuniary jurisdiction to try the suit and since the suit is not filed within twelve years from the date of death of Anasuryamma, the same is barred by limitation as per explanation (b) to Article 65 of the Limitation Act, 1963 (the Act), and so the plaintiff is not entitled to claim a share in the suit property and dismissed the suit. On appeal by the plaintiff in A.S.No.1 of 1991, the learned Subordinate Judge, Miryalaguda reversed the finding of the Trial Court and held that the suit is not barred by limitation and that the plaintiff, who is entitled only to 1/6th share in the suit property, is entitled to seek partition of her 1/6th share. Hence this second appeal by the defendants.

3. The point for consideration is whether the suit is barred by virtue of explanation (b) to Article 65 of the Limitation Act?

4. The contention of the learned Counsel for the defendants is that the lower appellate Court was in error in upsetting the well-reasoned judgment of the trial Court holding that the suit is barred by time, and contended that since explanation (b) to Article 65 which reads:

"Where the suit by a Hindu or a Muslim, entitled to possession of immovable property on the death of a Hindu or a Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies."

and which squarely applies to the facts of this case, is not properly interpreted by the lower appellate Court and because the mother of the plaintiff died 20 years prior to the filing of the suit the suit is clearly barred by time.

5. Explanations (a) and (b) to Article 65 of the Act correspond to Articles 140 and 141 of the Limitation Act, 1908. Very similar question came up for consideration in *P.V.K. Jaggarao v. B.V. Jagannadhamma* 1989 (1) ALT 82 where Kodandaramayya, J, while considering the applicability of explanation (b) to Article 65, had, after referring to the case law on the subject, clearly held that the sentence "Hindu or Muslim entitled to possession of immovable property on

the death of a Hindu or Muslim female" used in explanation (b) to Article 65 does not apply to cases of persons "succeeding" to the estate of a female or "claiming through" a female. The learned Judge relied on *Cursundas v. Vandravandas* ILR 14 Bom. 482 for holding that when a female is entitled absolutely to an estate, and the right claimed in that property on her death is not by "reversion" but by "inheritance", explanation (b) to Article 65 does not apply. In this case, the plaintiff is seeking relief of partition on the ground that she is an heir to the estate of her mother Anasuryamma, but not on the ground that she, as a reversioner, is entitled to the property in enjoyment of her mother Anasuryamma, consequent on her death. Therefore, merely because Anasuryamma died about 20 years prior to the filing of the suit, the right of the plaintiff to seek partition of the property left behind by her, as an heir to her estate under Hindu Succession Act is not barred under explanation (b) to Article 65 of the Limitation Act.

6. As per Section 15(1)(a) read with Section 16 of Hindu Succession Act, if a female Hindu dies intestate, her property would devolve on her children and husband in equal shares. Since mother of the plaintiff died intestate, plaintiff and defendants are the only heirs to her estate and so they are coheirs or co-sharers of the property left behind by Anasuryamma, It is well known that in cases of co-sharers when there is no express denial or ouster, question of limitation for claiming partition does not arise (see *Mohd. Zainulabudeen v. Syed Ahmed Mohideen* AIR 1990 SC 507 and *Sadasivam Vs. K. Doraisamy*,). Only in cases where ouster is pleaded and proved, can a co-sharer prescribe title to the joint property by adverse possession. Since ouster is neither pleaded nor proved, question of defendants prescribing title to the entire plaint schedule property by adverse possession does not arise. Therefore, the lower appellate Court rightly held that the suit is not barred by time. The point is answered accordingly.

7. In view of my finding on the point for consideration, I find no merits in this second appeal and hence the second appeal is dismissed. No costs.