

(2007) 09 AP CK 0106

In the Andhra Pradesh High Court

Case No : Second Appeal No. 237 of 1995

Daggubati Ranganayakulu (died) rep. by L.Rs.

APPELLANT

Vs

Polini Venkata Subbaiah and Others

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Evidence Act, 1872 — Section 115

Hindu Succession Act, 1956 — Section 14

Citation : (2008) 4 ALD 377 : (2008) 4 ALT 495

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Movva Chandrasekhara Rao, for the Appellant; M.V.S. Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The appellants are the plaintiffs in O.S. No. 218 of 1974, in the Court of Principal District Munsif, Chirala. They filed the suit against the respondents, for the relief of recovery of possession of plaint A-schedule land, from defendants 1 and 2, and in the alternative, for decree of Rs. 6,000/-, with subsequent interest, against defendants 3 and 4. It was also claimed that a charge over B-Schedule property be created, for payment of the same. The case presented by the appellants was as under.

2. For the sake of convenience, the parties are referred to, as arrayed in the suit. Addanki Venkata Narasimham and his cousin brother Addanki Veera Raghavaiah, held various items of immovable properties in joint. They had a sister by relation, T. Laxmamma, who became widow at a young age, and was living at her parental house. On 22.5.1923, Venkatanarasimham and Veera Raghavaiah executed a document, Ex.B-1, in favour of their sister, T. Laxmamma. Under this, life interest was created in favour of their sister, over an extent of Acs.5-05 cents of land in Sy. Nos. 286 and 282/2 of Addanki village (for short "the suit schedule property"). The vested remainder was to revert to the legal heirs of Venkata

Narasimham and Veera Raghavaiah, after the death of Laxmamma. Few years thereafter, both the brothers died and their sister was alive till 1967.

3. Smt.Mahalaxmamma was the wife of Venkata Narasimham, and Smt.Venkata Subbamma was the wife of Veera Raghavaiah. After the death of the two cousin brothers, Mahalaxmamma filed O.S. No. 653 of 1935, in the Court of Principal District Munsif, Ongole, for maintenance, against Venkata Subbamma. The dispute was settled out of court, with the intervention of elders, and a compromise decree, Ex.B-5, was passed on 21.10.1936. Apart from other items of properties held by the joint family, the widows partitioned their future right to succeed to the vested remainder, in the event of death of their sister-in-law, Laxmamma. The suit schedule property, covered by Ex.B-1, was to revert to them. Schedule A and B of plaintiff schedule are the equal halves of the said Ac.5-05 cents. Venkata Subbamma, widow of Veera Raghavaiah, adopted the 4th defendant, by name Venkataramaiah, through a registered Adoption Deed, Ex.A-4, dated 10.8.1962. She had also executed a will, Ex.A-2, dated 4.8.1962, bequeathing her entire property to her adopted son. She died few months thereafter.

Defendant No. 4, being a minor, through his natural father, the 3rd defendant, sold the A-schedule property to the plaintiffs, through a sale deed, Ex.A-1, dated 17.5.1968. The plaintiffs contended that defendants 1 and 2, have no manner of right and trespassed into the A-schedule property, with the collusion of defendants 3 and 4, high handedly.

4. The 2nd defendant filed a written statement, admitting the sequence of events, up to the stage of the passing of compromise decree in O.S. No. 653 of 1935. According to him, Mahalaxmamma executed a will, Ex.B-6, dated 25.9.1961, in favour of her brother late Mynampati Venkata Narasimham, who is the father of 2nd defendant, bequeathing all her properties, including the suit schedule property, and that she died in November 1961. Mynampati Venkata Narasimham, in turn, is said to have executed a will, dated 25.9.1961 in favour of 2nd defendant, and thereafter, he died on 19.1.1966. It was pleaded that on the death of Laxmamma in April 1967, the 2nd defendant, being the legatee of the estate Mahalaxmamma, and the 4th defendant being the adopted son of legatee of Venkata Subbamma, inherited to the vested remainder, in the suit schedule property, in equal shares. Subsequently, the property is said to have been divided into two halves and that the A-schedule property has fallen to his share. He further stated that the 1st defendant was a tenant of the said land, before it was divided, and thereafter. The validity of the alleged sale in favour of the plaintiffs is seriously disputed. It was further pleaded that the 2nd defendant sold the suit schedule land to the 1st defendant on 8.4.1974, and ever since then, the latter is cultivating the land, in his capacity as owner. The 1st defendant filed a memo, adopting the written statement of 2nd defendant. Defendants 3 and 4 remained ex parte.

5. Through its judgment, dated 12.4.1983, the trial court dismissed the suit,

insofar as it relates to the relief of recovery of A-schedule land. The other part of the relief was granted against defendants 3 and 4. Plaintiffs filed A.S. No. 17 of 1983, in the Court of Subordinate Judge, Chirala. The appeal was dismissed on 31.8.1994, confirming the judgment and decree of the trial court. Hence, this Second Appeal. Sri M.Chandra Shekar Rao, learned Counsel for the appellants, submits that the decree in O.S. No. 653 of 1935, marked as Ex.B-5, insofar as it related to the suit A & B schedule land, is hit by the concept of "spes successionis" and become inoperative, since Laxmamma was very much alive, when it came to be passed. He contends that since Mahalaxmamma died, much before the succession on death of Laxmamma opened, her share merged in that of Venkata Subbamma.

6. According to him, the entire estate of Venkata Subbamma, including the one that would accrue to her by reversion, had devolved upon defendant No. 4. He submits that even otherwise, defendant No. 4 is to be treated as the adopted son of Venakta Raghavaiah also, and thereby was entitled to succeed to the vested remainder in the suit property. Learned Counsel submits that when the 2nd defendant and his legal heirs filed E.P., to execute the decree, it was dismissed as time barred, and in that view of the matter, the 2nd defendant did not derive any right out of the said decree. He places reliance upon some precedents, in support of the submissions made by him.

7. Sri M.V.S. Suresh Kumar, learned Counsel for defendants 1 and 2, on the other hand, submits that on the death of Venkata Narasimham, his wife Mahalaxmamma, succeeded to his estate, including the right to inherit the vested remainder, to the extent of half of the property, covered by Ex.B-1. It is his case that Mahalaxmamma had executed a will, in favour of the father of defendant No. 2, and the latter, in turn, inherited to the estate of his father, by succession. He submits that the adoptive mother of 4th defendant, Venkata Subbamma died, much before Laxmamma died, and all the alleged legal infirmities, attributed to the succession in favour of the 2nd defendant, would equally apply to 4th defendant also. Though the dispute in the second appeal appears to be simple and in respect of about 2 1/2 acres of agricultural land, several important questions of law arise for consideration. They range from the application of principle of "Spes Successionis", to one, relating the opening of succession vis-vis, a right to life estate.

8. It is not necessary to repeat the facts, which have already been stated, with the permissible amount of precision. The trial court framed the following issues, on a consideration of the pleadings before it.

- 1) Whether the plaintiff is entitled to the possession of the Plaintiff A-schedule property?
- 2) Whether the plaintiff is entitled to get the Plaintiff B-schedule property sold?
- 3) Whether the plaintiff is entitled to the claim of Rs. 2000/- by way of additional damages?

- 4) Whether this Court has no territorial jurisdiction to try this suit?
- 5) Whether the court fee paid is correct?
- 6) Whether the first defendant is a bonafide purchaser for consideration without any notice of defect in title?
- 7) To what relief?

9. On behalf of plaintiffs, Pws-1 to 7 were examined, and Exs.A-1 to A-6 were marked. On behalf of defendants, Dws-1 to 4 were examined and Exs.B-1 to B-29 were marked. Apart from that, Exs.X-1 to X-13 were marked through non-party witnesses. The trial court dismissed the suit, insofar as the principal relief, viz; the recovery of possession, is concerned. Inasmuch as there was unity of interest between the plaintiffs on the one hand, and defendants 3 and 4, on the other hand, the alternative relief granted by the trial court in favour of the plaintiffs was hardly of any consequence.

10. On its part, the lower appellate court identified the following points for its consideration:

- 1) Whether the plaintiffs established their title to the suit A-schedule property?
- 2) Whether the plaintiffs established their prior possession over the suit A-schedule property?
- 3) Whether the judgment and decree passed by the trial court are sustainable in law and on facts?

and answered them against the plaintiffs.

11. At the outset, it may be pointed out that a suit for mere possession can be successfully pursued, if only there does not exist any dispute as to the title, or prior possession, recognized by law. If there is any cloud on the title vis--vis the property sought to be recovered, it becomes difficult for the court to grant the relief, and the controversy would drift into the one of declaration of title. Any failure, in this regard, is prone to have its own affect, upon the permissibility of granting the relief of mere recovery of possession. In the instant case, it is not as if the status of the plaintiffs, or their vendor, defendant No. 4, was recognized either by the contesting defendants 1 and 2, or by any court of law, before the present suit came to be filed. Under Ex.B-1, an extent of Acs.5-05 cents of land was gifted or settled by two co-parceners, Venkata Narasimham and Veera Raghavaiah, in favour of Laxmamma, in the year 1922-23. The disposition was not absolute in nature. Life interest was created in favour of the donee, and the vested remainder was to revert to the legal heirs of the donors, after the life time of donee. It is a different thing, as to whether a gift of such a nature is permissible in law. None of the parties made any grievance out of this. Therefore, it is to be proceeded on the basis that the donee was transferred only a life interest, and the vested remainder was to revert to the donors, or their legal heirs. It is a matter of record that both the donors died by 1927, and the

donee lived up to 1967. A further complication arose on account of the fact that the widows of the donors also died before 1967, and that none of them had any issues. Therefore, the primary task is to identify the legal heirs vis--vis the property covered by Ex.B-1, consequent on the death of Laxmamma.

12. While Laxmamma was very much alive, the wife of Venkata Narasimham, Mahalaxmamma, filed O.S. No. 653 of 1935, against Venkata Subbamma, wife of Veera Raghavaiah, for maintenance. The suit came to be disposed of, in terms of a compromise arrived at between the two women. The properties held by the joint family were divided among them. The right to succeed to the vested remainder, as provided for under Ex.B-1, was also mentioned in the decree, marked as Ex.B- 5. Sri Chandra Shekar Rao, learned Counsel, is correct in his submission that Ex.B-5 ought not to have dealt with the vested remainder under Ex.B-1, during the lifetime of Laxmamma. The first reason is that it became necessary to interpret Ex.B-1 and, to examine the impact of Section 14 of the Hindu Succession Act upon the life estate created under the document. The second is that even if Ex.B-1 is taken on its face value, the occasion to deal with a vested remainder would arise, only on the death of the owner of the limited estate. Therefore, the inclusion of the property covered by Ex.A-1 in the compromise decree, Ex.B-5, was of no legal consequence, in the ordinary course. However, the fact that the only party, that could have objected for the same, viz. Venkata Subbamma, had acquiesced in this, would give rise to certain legal consequences.

13. The law in this regard was succinctly stated by Chief Justice Subba Rao, as he then was, in his inimitable style, in *Seetharamayya J. Vs. Sarva Chandrayya and Others*, as under:

Para-17 : The law on the subject may now be summarized. During the lifetime of the widow, a presumptive reversioner has only a spes successionis in the estate of the last male-holder and he cannot, therefore, purport to convey the said interest or otherwise deal with it. His rights in the property would be crystallized only after succession opens. But after succession opens or even during the widow's life-time he may elect to stand by the transaction entered into by the widow or otherwise ratify it, in which case he would be precluded from questioning the transaction.

In this connection, the cases have dealt with three different aspects of the principle of estoppel (1) that which is embodied in Section 115 of the Evidence Act (2) election in the strict sense of the term, whereby the person electing takes a benefit under the transaction, and (3) ratification i.e., agreeing to abide by the transaction. A presumptive reversioner, coming under any one of the aforesaid categories, is precluded from questioning the transaction when succession opens and when he becomes the actual reversioner.

So far, the law is well settled and there is no dispute. But can there be any difference in principle if the presumptive reversioner is a minor at the time he

has taken a benefit under the transaction.

In such a case, the principle of estoppel will be controlled by another rule governing the law of minors. A minor obviously cannot be compelled to take the benefit of a transaction which will have the effect of depriving him of his legal rights, when succession opens. But a minor can certainly after attaining majority ratify a transaction entered into on his behalf by the guardian. If he so ratifies the transaction entered into by his guardian and accepts the benefit thereunder, there cannot be any difference in the application of the principle of election....

14. Therefore, by electing to share the property equally, or acquiescing in the equal rights in them, both the presumptive reversioners have added legality to an otherwise untenable disposition of the property. Let the matter be examined from another angle. Ignoring these uncertainties, or complications, which one may choose to call, let it be assumed that the property gifted to Laxmamma was not subjected to any disposition, by the time she died in the year 1967. As pointed out earlier, Mahalaxmamma and Venkata Subbamma predeceased Laxmamma.

15. Ex.B-1 created a right of reversion to the extent of half of the property covered by it, in favour of Venkata Narasimham and the balance in favour of Veera Raghavaiah, and thereby upon their legal heirs. Since they were cousin brothers, death of one of them does not result in devolution of the estate of the deceased on the other, by survivorship, particularly, when they had wives, living by the time of their death.

16. So far as the estate of Venkata Narasimham is concerned, it devolved upon his wife Mahalaxmamma, on his death. She also died, some time in the year 1961. It may be true that by that time the succession to the suit schedule property did not open, because, Laxmamma was very much alive. However, the estate of Mahalaxmamma, inherited from her husband, which included the right to inherit half of the suit schedule property, has to devolve on some one, or the other, through testate or intestate succession. She is said to have executed a registered will, dated 25.9.1961, marked as Ex.B-6, in favour of the father of 2nd defendant. For all practical purposes, he had stepped into the shoes of Venkata Narasimham, vis--vis vested remainder in suit schedule property. Coming to the property of Veera Raghavaiah, he too did not have any issues, and on his death some time in 1927, his estate, including the right to half of the vested remainder in the suit schedule property devolved, upon his wife Venkata Subbamma. She adopted 4th defendant as her son on 10.8.1962 under Ex.A-4. In addition to that, she executed a will on 4.9.1962, marked as Ex.A-3, in favour of 4th defendant. She died in the year 1962. Thereupon, the entire estate of Veera Raghavaiah devolved upon the 4th defendant, through his adoptive mother Venkata Subbamma.

17. It is urged that since Venkata Narasimham did not have any children, his estate devolved upon Veera Raghavaiah, and as he too did not have any children,

the combined estate devolved upon his wife Venkata Subbamma. The further contention is that the adoption of defendant No. 4 by Venkata Subbamma would bring about a situation of Defendant No. 4 being treated as the adopted son of Venkata Narasimham also. It is too difficult to accept this contention. Firstly, defendant No. 4 was not even born, by the time Venkata Narasimham died. Under the Hindu Adoption and Maintenance Act, 1955, an adoption, at the most, can take effect from the date of ceremony, and not earlier thereto. It can never be retrospective, in operation, much less anterior to the date of birth of adopted child.

18. Secondly, law does not contemplate any break in the chain of succession. It always ensures continuity and spontaneous occurrence, the moment the succession opens. That is the reason why different classes of heirs are defined, depending upon the sanguinity or kinship. Even where an individual holding property dies, without leaving heirs of any category whatever, law provides for devolution or accrual of such property to the State, as escheat. To put it in other words, succession on the death of an individual does not await the emergence of a successor or heir of a particular degree. It flows or passes on, to such category of the legal heirs, as are immediately available. Viewed in this context, the succession, consequent on the death of Venkata Narasimham or of Veera Raghavaiah cannot be expected to wait till the 4th defendant came to be adopted by Venkata Subbamma, nearly four decades, afterwards. Such a course is not only impermissible in law, but also may appear to be ridiculous, by the principles obtaining, in any form of society.

19. It may be true that, by the time the two donors and their widows died, the succession to the suit schedule property did not open, in view of the fact that Mahalaxmamma was alive till 1967. But the right of the deceased to succeed to the vested remainder, which is in the form of "Spes Successionis", did not get extinguished, by virtue of their death. It remained in the form of a seed, which germinated when Laxmamma died in 1967. Thereby, succession opened for the suit schedule property. While the father of defendant No. 2 represented the estate of Venkata Narasimham, defendant No. 4 represents that of Veera Raghavaiah. Both of them got their equal halves in the suit schedule property.

20. These two estates included the respective "Spes Successionis" also. The 4th defendant had retained his share, but alienated the other half of the suit schedule property, in favour of the plaintiffs. He did not have any title to the other half. It is the common case that the 1st defendant was cultivating the entire suit schedule property and was, in fact, paying half of the lease amount to the 4th defendant and the balance to the 2nd defendant. The record discloses that the 2nd defendant sold his half share to the 1st defendant, in the year 1974, through Ex.B-23.

21. Viewed from any angle, the plaintiffs cannot be granted the relief of recovery of possession of the suit schedule property. The courts below have examined the matter from the correct perspective, and this Court is not inclined to take a

different view.

22. The Second Appeal is accordingly dismissed. There shall be no order as to costs.