

(2007) 09 AP CK 0107

In the Andhra Pradesh High Court

Case No : Second Appeal No. 574 of 1997

Dr. K. Ashok Reddy

APPELLANT

Vs

K. Ramchandra Reddy and Another

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Evidence Act, 1872 — Section 63, 65, 91

Citation : (2008) 1 ALD 708

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P.V. Narayana Rao, for the Appellant; T. Jagdish, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The plaintiff in O.S. No. 162 of 1984 on the file of the learned Principal Subordinate Judge, Warangal, filed this second appeal. Respondents 1 and 2 are his brothers.

2. The appellant filed the suit initially, against his father and two brothers, for partition of the suit schedule properties. During the pendency of the suit, his father died and since his estate is represented by the appellant and respondents 1 and 2 herein, no other individuals were added as parties.

3. The appellant pleaded that the joint family, comprising of himself and his brothers, is possessed of "A", "B" and "C" schedule properties and in spite of his repeated requests, the respondents did not effect partition. The 1st respondent herein remained ex parte in the suit. The suit was contested by the 2nd respondent alone. He pleaded that there was a partition of the joint family properties in the year 1973 and that a list of partition was prepared on 30.04.1973. He further pleaded that subsequent to the partition, certain adjustments of shares has also taken place among the co-parceners and thereafter, the parties are enjoying their respective shares of properties. The trial Court accepted the plea of prior partition and dismissed the suit on 27.12.1989,

as regards plaint "A" and "B" schedule properties but passed a preliminary decree for "C" schedule properties. Thereupon, the appellant filed A.S. No. 37 of 1990 in the Court of II Additional District Judge, Warangal.

4. The appeal was dismissed on 20.01.1997. Hence, this Second Appeal. Sri P.V. Narayana Rao, the learned Counsel for the appellant submits that the so-called list of partition was not registered and even the un-registered document was not placed before the Court. He contends that whenever a document is relied upon, no oral evidence can be allowed in support of thereof. In support of his contention, the learned Counsel places reliance upon several Judgments, including the one in P.V. Subba Rao v. J. Kesava Rao 1967 (2) An.W.R. 444. He submits that once the plea of prior partition becomes unacceptable, there does not exist any alternative, except to direct the partition of the suit schedule properties.

5. Though the 1st respondent is served with notice, he has not chosen to enter appearance. Sri T. Jagdish, the learned Counsel for the 2nd respondent submits that his client has not only deposed as a witness, but also has examined the scribe as well as elderly persons, who took part in the partition of the properties. He further submits that there is ample documentary evidence also, in the form of entries in pahanies, revenue records etc., to support the plea of prior partition. He pleads that the custodian of the document viz., the father of the parties herein, died during the pendency of the suit and thereby, the document was not available to be produced before the Court.

6. On the basis of the pleadings before it, the trial Court framed four issues as under:

1. Whether the parties effected a partition on 30-4-1973 and the parties are in possession of their respective shares as mentioned by the defendant No. 3 in his written statement?

2. Whether there was a re-adjustment of shares in shares in agricultural lands in 1974 as mentioned by defendant No. 3 in his written statement?

3. Whether the third defendant purchased 10 acres of land in item Nos.2 to 5 of schedule "B" are his self acquired properties? If so what is its effect?

4. Whether the suit for partial partition is not maintainable?

7. The appellant deposed as P.W. 1 and four more witnesses were examined as P.Ws. 2 to 5. He filed Exs.A.1 to A.7. On behalf of the respondents, D.Ws.1 to 7 were examined and Exs.B.1 to B.5 were marked. On dismissal of the suit, the appellant filed the appeal. The lower appellate Court did not frame any points, as such, for its consideration, but proceeded to discuss all the issues framed by the trial Court, as well as the findings thereon.

8. The relationship of the parties and the possession of the properties mentioned in the Schedule by the family were not disputed by the 2nd respondent. His

objection to the claim made by the appellant was on the basis of a prior partition. It was in this context that the trial Court framed two issues, touching on this aspect. The manner, in which the properties were said to have been divided, was described by the 2nd respondent in para (4) of the written statement as under:

On 30-4-1973, the parties to the suit effected a partition of all these properties and the moveable properties into four shares in the presence of the elders Sarvasri Pulichinta Abbi Reddy R/o Nagaram Tq. Maripada, Balguri Biksham Reddy R/o. Nagaram, Tq. Maripada and Sri Kambam Mutha Reddy R/o Fatehpur Tq. Maripada. The properties were divided on the spot in the presence and under the supervision of Sri Ennam Somi Reddy R/o Narasimulapeta, Tq. Maripeda. Lists of partition were drawn up on 30-4-1973 in the presence of all the parties and were signed by them as also the elders who effected the partition. The list of Immoveable properties, prepared on 30-4-1973 is in the custody of D.1 or D.2 who ever is custody is hereby given notice to produce the same. The list of movables is being filed herewith.

9. This was followed by another averment to the effect that in the next year, there was re-adjustment of the properties. The written statement is silent as to whether any amendment was caused to the list of partition prepared on 30.04.1973. Be that as it may, had the list of partition, dated 30.04.1973, been placed before the Court, the plea of prior partition would have gained substantial strength. The admissibility of that document, on account of the fact that it was not registered, would have assumed secondary importance. Once the partition, as a fact, was established on the strength of a written document, though its content may not become admissible, on account of non-registration, the factum of disruption of the joint status of the family would be capable of being inferred.

10. The Evidence Act is clear, in its purport, as to the manner, in which the contents of a document must be proved. It enables the proof thereof through primary or secondary evidence. While the primary evidence happens to be the document itself, the circumstances, under which the secondary evidence can be adduced, are provided for under Sections 63 and 65 of that Act. Though the 2nd respondent made an averment in the written statement that the document is in the custody of his father or the 1st respondent herein, he did not take any steps to produce it before the Court. In his chief examination, he did not assign any reason, worth its name, for not placing the document before the trial Court. The purport of the oral evidence adduced on behalf of the 2nd respondent, the only contestant, is that there was a list of partition, but it was not produced before the Court. It is here that the principle underlying Section 91 of the Evidence Act gets attracted viz., no oral evidence can be adduced to prove the contents of a written document. In P.V. Subba Rao's case 1967 (2) An.W.R. 444, this Court held that no oral evidence is permissible, to prove the contents of a written document. Elaborate discussion was undertaken with reference to the provisions of the Evidence act as well as the Indian Stamp Act. The principle enunciated

therein was affirmed by the Supreme Court in AIR 1971 1070 (SC) . When such is the position of law, the Courts below have accepted the oral evidence adduced by the 2nd respondent and arrived at a conclusion that there was a prior partition in the family.

11. In his cross examination, the 2nd respondent stated that even after partition, the properties were shown, in the records, as though they are in the joint possession of all the brothers and their father. The relevant statement reads as under:

From 1973 to 1980 all the joint family lands were shown in the revenue records in the joint possession of we brothers and our father.

12. D.W. 2 is said to be one of the elders, who took part in partition of the joint family properties, among the appellant and the respondents. He too stated that a document was prepared, but expressed his inability to furnish the particulars thereof. D.W. 4 is said to be the scribe of the document. According to him, apart from the list of partition, dated 30.04.1973, another document was written in the year 1974, when re-adjustment has taken place. This was not even the case of D.W. 1.

13. The learned Counsel for the 2nd respondent made an attempt to prove the factum of partition, on the basis of the entries made in the revenue records and the pattadar pass books issued in favour of the respondents herein. He made a reference to the relevant provision of the A.P. Rights in Land and Pattadar Pass Books Act, 1971. In this regard, it has to be noted that a partition can give raise to entries in the revenue records, but a partition cannot be inferred on the basis of such entries. Unless the partition, as a fact, is proved, any amount of mutations or entries cannot be taken into account, to infer partition. For the foregoing reasons, the Second Appeal is allowed and the decree passed by the trial Court, insofar as it rejected the claim of the appellant for "A" and "B" schedule properties, as affirmed by the lower appellate Court, is set aside. The preliminary decree passed by the trial Court shall be in respect of "A" and "B" schedule properties also. There shall be no order as to costs.