
(1992) 10 AP CK 0010
In the Andhra Pradesh High Court
Case No : C.R.P. No. 605 of 1988

G. Thimma Reddy and Others	Vs	APPELLANT
The Special Tahsildar, Land Reforms and Others		RESPONDENT

Date of Decision : 13-10-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 115
Hindu Marriage Act, 1955 — Section 29(2), 4

Citation : (1992) 3 ALT 733 : (1993) 1 APLJ 49

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : E. Ayyapu Reddy, H. Harischandra Reddy, K. Rama Krishna Reddy and A. Sudershan Reddy, for the Appellant; G.P. for Land Acquisition, for the Respondent

Final Decision : Allowed

Judgement

B. Subhashan Reddy, J.—These four Civil Revision Petitions arise under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (in brief "the Act") which came into effect from 1-1-1975 onwards.

2. One G. Virupaksha Reddy was the "kartha" of the joint family owning the lands in question. He had two wives viz., Nagalakshamma and Sumitramma. Through Nagalakshamma, he had no issues and thereafter he married Sumitramma and through her begot three sons viz., Thimma Reddy, Hanumantha Reddy and Srinivasa Reddy and four daughters Ramalingamma, Parijathamma, Sarojamma and Sunithamma. Out of the above offsprings, son Thimma Reddy and daughters Ramalingamma, Parijathamma and Sarojamma were majors, while Hanumantha Reddy, Srinivasa Reddi and Sunitamma were minors. Six declarations have been filed by the following family members:

(1) G. Virupaksha Reddy (C.C. No. 2442/ALUR/75)

(2) G. Thimma Reddy (C.C. No. 2443/ALUR/75)

- (3) G. Sarojamma (CC. No. 2446 ALUR/75)
- (4) G. Hanumantha Reddy (C.C. No. 2447/ALUR/75)
- (5) G. Sreenivasa Reddy (C.C. No. 2448/ALUR/75)
- (6) G. Nagalakshamma (CC. No. 1558/ALUR/75)

All the declarations were taken-up together and after enquiry is being held, the Primary Tribunal by order dated 25-2-1977 held that excepting G. Thimma Reddy who was entitled for a separate holding being not a member of family unit of his father, other declarants were the members of family unit of G. Virupaksha Reddy and allowed only one family holding for all the said persons put together headed by G. Virupaksha Reddy as the Kartha of the joint family. Accordingly the standard holdings held by them i.e., G. Virupaksha Reddy and G. Thimma Reddy were arrived at, and after allowing one standard holding for each of the said persons heading the family units, the balance was held to be in excess of ceiling area, and in the appeal the family units as arranged by the primary Tribunal was not disturbed, but the contentions with regard to some other points were accepted and consequently the standard holdings held by them were reduced and nevertheless it was held that they were excess land holders to the extent of several units over and above the permissible ceiling areas, and that the same was liable to be surrendered. This was in L.R. A. No. 2457 / 77 and the judgment by the said Appellate Tribunal was rendered on 30-12-1978. The said Appellate Tribunal has held that G. Virupaksha Reddy family unit was holding surplus area equivalent to 7.5807 S.H., and G. Thimma Reddy is a surplus holder of 2.5269 S.H., Revision was preferred in C.R.P. No. 2038/80 and the same was decided on 24-9-1981; but only one relief of deduction of double computation was ordered to be given on verification and the contention with regard to "pasupu kumkuma" was rejected, while on the issue of divorce of first wife the matter was remitted back to the Appellate Tribunal for fresh disposal. On remand, the L.R.A. was re-numbered as 77/81 and again the Land Reforms Appellate Tribunal, Kurnool rendered judgment on 31-12-1987 accepting the contention of double computation and directing deduction of the same, but repelling the contention with regard to divorce of the first wife. These Civil Revision Petitions have been preferred against the said Judgment rendered by the Land Reforms Appellate Tribunal, Kurnool. While C.R.P. No. 605/88 was preferred by G. Thimma Reddy, C.R.P. No. 1336/88 was preferred by three daughters viz., Ramalingamma, Parijathamma and Sarojamma. While C.R.P. No. 1683/88 was preferred by Nagalakshamma, C.R.P. No. 1758/90 was preferred by Hanumantha Reddy and Srinivasa Reddy.

3. Mr. E. Ayyapu Reddy, the learned counsel has appeared for Ramalingamma, Thimma Reddy, Hanumantha Reddy and Srinivasa Reddy, while Mr. Harischandra Reddy has appeared for Nagalakshamma.

4. Mr. E. Ayyapu Reddy, the learned counsel, leading the arguments, has submitted that even though several points were raised, he is stressing only with

regard to deduction of the lands held by Nagalakshmamma and also the lands given by way of "pasupu kumkuma" by Virupaksha Reddy to their daughters. In order to substantiate the possession of the said persons whose lands are sought to be excluded from computation to the family units of G. Virupaksha Reddy and G. Thimma Reddy, additional evidence has been filed in the shape of documentary evidence, by filing Civil Miscellaneous Petitions and the same have been ordered and taken on record.

5. Mr. E. Ayyapu Reddy, the learned Counsel, further submits "hat the very fact that a registered settlement deed was executed way back on 18-12-1957 in favour of Ngalakshmamma shows that there were already some misunderstandings between them and that she wanted allotment of separate lands for her sustenance in view of the second marriage of her husband with Sumitramma. He also contends that the relations between the two became strained, as while Nagalakshmamma was all alone and was not being attended to and was being neglected by G. Virupaksha Reddy, while he was merrily living with his second wife begetting several children and because of the strain there was a severance in their marital status and that in the caste of G. Virupaksha Reddy (who since died) there exists a custom of effecting divorce by convening a meeting of caste elders and then writing a document to that effect which was enough for termination of marriage by divorce and that the same has happened on 5-3-1966. He also contends that there, should not be any doubt to accept this factum of both custom and the divorce and that the lower Appellate Tribunal has erroneously held that the divorce was not proved even though did not reject the contention of the existence of the custom. "Pasupu Kumkuma" issue of course was not adjudicated by the Appellate Tribunal at all.

6. Mr. C. Ramakrishna, the learned Govt. Pleader, replies that the custom is not proved, that even if the custom is proved, the divorce has not been proved and even assuming that the factum of divorce has also been proved, the same is hit by Section 4 of Hindu Marriage Act, 1955, as after the advent of the provisions of Hindu Marriage Act, 1955, no customary divorce canbe accepted. He also argues that as in the earlier round the issue of "pasupu kumkuma" was already held against the declarant and as the matter was remanded only for determination of one issue as regards the divorce of the first wife, the issue relating to "pasupu kumkuma" cannot be reagitated.

7. Coming to the second contention, in the earlier Civil Revision Petition, admittedly, all the daughters were not parties. As such, it cannot be said that the order in the Civil Revision Petition binds such of those daughters who were not parties. Further, in the context of evidence led by G. Virupaksha Reddy alone, the plea with regard to "pasupu kumkuma" was not accepted. The issue was not elaborately gone into, and it cannot be said that there was a complete adjudication on the aspect of "pasupu kumkuma", more so in the absence of necessary parties before this court. In the circumstances, I allow the plea of "pasupu kumkuma" to be raised. But the difficulty is that I cannot re-appreciate

the evidence which has been adduced before this court by invoking the provisions under Order 41, Rule 27 C.P.C. The same needs a factual finding and enquiry in that regard has to be made only by the Primary Tribunal after issuing notices to the parties and affording opportunity to them. As such, the additional evidence adduced before this court comprising documents be transmitted to the Primary Tribunal. But before parting this issue, I have to lay down legal principles as to whether the plea of "pasupu kumkuma" is sustainable under law for the purpose of deducting the lands covered by the same from the family unit of G. Virupaksha Reddy. It was authoritatively held by the Supreme Court as also this Court in Guramma Bhratar Chanbasappa Deshmukh and Another Vs. Malappa, M. Peramma v. The Authorised Officer, L.R., Ongole 1978 (2) ALT 1 and /. Ramachandra Rao v. Authorised Officer, L.R. Gannavamm 1980 (1) An.W.R. 255 that from the very nature of the caste traditions and the lands being the only prime properties in agricultural communities, the usage of the tradition of allotting land by way of "pasupu kumkuma" to the daughters at the time of marriages was well recognised, that the same need not be evidenced through a registered document, that eventhough there is no document if the evidence reveals and that there was in fact such an allotment to the daughters at the time of their marriages as "pasupu kumkuma", the same should be deleted from the holding of the father i.e., in the instant case Mr. G. Virupaksha Reddy. As such, I remand the matter to the Primary Tribunal on the issue of the Pasupu Kumkuma and if it is proved by the petitioners in C.R.P. No. 1336 of 1988 that they had been in possession of the lands given to them pursuant to "pasupu kumkuma", the said lands shall be deleted from the holding of both G. Virupaksha Reddy and G. Thimma Reddy.

8. Dealing with the first contention with regard to settlement in 1957 and the divorce in 1966, I am of the considered view that the plea raised in this regard. by the learned counsel for the petitioners both Mr. E. Ayyapu Reddy and Mr. Harischandra Reddy, cannot be doubted and is thus acceptable for the reasons mentioned infra.

9. Admittedly, G. Virupaksha Reddy had no issues through Nagalakshamma and he held large chunk of agricultural lands. It was very usual in agricultural communities to crave for having more children and particularly the male one and more so for a person like G. Virupaksha Reddy, the "kartha" of the joint family in question holding extensive agricultural lands. It is also not unusual that when second marriage is to be contracted, the first wife and her well-wishers will insist upon sufficient security for her as there will be reasonable apprehension of her being neglected the moment second marriage is contracted and children are begot as it is always such a second wife begetting children who will be in control of the tilings and will be a dominant factor in the decisions taken by husband. As such, it is not unusual in the instant case such an insistence was made and consequently such a sustenance right was secured by a settlement that too by a registered deed dated 18-12-1957. The genuineness of the said deed cannot be doubted. Infact, the same was not doubted by the fact finding lower tribunals,

and rightly so. Her exclusive possession over the lands given to her under settlement was also not doubted. What was doubted was only the factum of divorce and that too not on merits, but on a flimsy ground of the stamp being not in the name of either G. Virupaksha Reddy or in the name of his first wife Nagalakshamma. A mere perusal of the order passed by the Appellate Tribunal which is the subject matter of these revisions would reveal that that was the only determining factor to negative the contention of divorce by the lower Appellate Tribunal. I hold that this is a fallacy committed by the lower Appellate Tribunal. The above circumstance cannot be the sole circumstance for rejecting the plea of divorce. Equally, the observations of the lower Appellate Tribunal that as Nagalakshamma was already living separately and in possession of the lands settled in her favour, there was no need for divorce are sustainable. The stamp paper need not be purchased in the name of the party concerned. Anybody can be deputed to purchase the stamp and that is what was done in the instant case. By that, it cannot be doubted that the instance pleaded is manipulated and fabricated. Further, should the spouses feel that they had been living apart for years together without any affection and connection and no hope of getting together, no useful purpose will be served by continuing their marital tie and no exception can be taken if they resort to obtain divorce to sever their ties for all times to come. In the instant case, there is enough evidence both oral and documentary to prove the custom as also the divorce effected. P.Ws. 1 to 3 are caste elders, while P.W. 4 is the first wife herself. P.W. 2 has scribed the document, i.e., the deed of divorce dated 5-3-1966 and proved the same. P.W. 1 is a caste elder, who had also attested the document. P.Ws. 1 to 3 speak of existing custom in the caste of G. Virupaksha Reddy and particularly covered in the areas of erstwhile Taluks of Aluru, Ballari and Adoni. In the instant case, the lands were within the erstwhile Taluk of Aluru. The facts with regard to existence of custom and the divorce of Nagalakshamma with G. Virupaksha Reddy have been amply proved not only by oral evidence but also the document i.e., deed of divorce dt. 5-3-66 and absolutely there cannot be any doubt with regard to the genuinity of the same. In the circumstances, I hold that there exists a custom in the caste to which both G. Virupaksha Reddy and Nagalakshamma belong, that they were separated during the year 1957 and had been separately living and that she had been in exclusive possession of the lands settled in her favour under Ex.A-7 and that both of them got divorce before the caste elders under Ex.A-6 on 5-3-1966 and that since 5-3-1966 Nagalakshamma was no more the wife of G. Virupaksha Reddy.

10. Then remains another contention of Mr. C. Ramakrishna, the learned Govt. Pleader, that on the advent of Hindu Marriage Act, 1955 bringing in sweeping changes and particularly in view of overriding effect given to the said statute, the plea of divorce by custom even if it is proved, cannot sustain. He lays emphasis on the words employed u/s 4 of the Hindu Marriage Act, 1955, which read:

"Save as otherwise expressly provided in this Act-

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of mat law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b)(not relevant)"

But Mr. C. Ramakrishna, the learned Govt. Pleader, has skipped the opening words "Save as otherwise expressly provided in this Act" which are very material for construction of the said Section 4, particularly in view of the fact that overriding effect is given under the said provision. The words used are not "notwithstanding anything in any other law, custom..." If the section employed such words of non-obstante clause, the contention of Mr. Ramakrishna is sustainable. But we cannot read the said words u/s 4 as absolute and unconditional. The Parliament had deliberately saved the custom and usage prevalent among Hindus in view of their diversity and great hardship in codifying the same uniformly, what with, India comprising of several communities, castes and sub-castes having customs and usages of their own. That is why the Parliament had enacted Section 29 which comprises of savings and Sub-section (2) of the said provision which reads "Nothing contained in this Act shall affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act." is manifest of the same.

11. In view of this Sub-section (2) of Section 29 of Hindu Marriage Act, 1955 overriding effect of Section 4(a) thereof will not operate subject to of course the existence of custom. In the instant case I had already held that the custom is in existence and that the same has been proved. There are plethora of precedents in support of this proposition including that of a judgment of this court in Are Lachiah v. Are Raja Mallu, 1963 (1) An.W.R. 295 and I need not multiply the said precedents.

12. In the circumstances, the holding of Nagalakshamma cannot be clubbed with the holding of either Virupaksha Reddy or his sons or daughters and consequently Nagalakshamma shall be entitled to a separate holding of her own as an individual.

13. In the result, these Civil Revision Petitions are allowed directing the deletion of holding of Nagalakshamma, Hie petitioner in CRP No. 1683/88 from the holding of the petitioners in C.R.P.Nos. 605/88, and 1758/90 and compute the same to Nagalakshamma as an individual separately, while remanding the matter belonging to Pasupu kumkuma for fresh enquiry and disposal in accordance with the directions issued above, by the Primary Tribunal.

14. CRPs.Nos. 605/88 and 1758/90 are allowed in part, CRP No. 1683/88 is allowed and CRP No. 1336/88 is allowed and remanded. There shall be no order as to costs in all these C.R.Ps.