
(2013) 09 AP CK 0080

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 2401 of 1999

Garbham Jagannadha Patro (Died) and Others

APPELLANT

Vs

Bodla Satyanarayana, Died per LRs. and Others

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2014) 1 ALD 321 : (2014) 1 ALT 763

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : Sudhakar Babu, for the Appellant; V. Ravinder Rao, for the Respondent

Judgement

M.S. Ramachandra Rao, J.—This appeal is preferred against the judgment and decree dt. 24.07.1995 in O.S. No. 35 of 1991 of the I Addl. Sub-Ordinate Judge, Visakhapatnam. The appellants are plaintiffs in the suit. The suit was filed for recovery of possession of the plaint "A" Schedule properties after evicting the 1st defendant therefrom, for future profits and costs. Subsequently, the plaint was amended vide Order dt. 07.02.1995 and the relief of declaration of the title of the plaintiffs was also added to the above reliefs.

2. The plaintiffs are brothers and are sons of late G. Kurmanadha Patro of Parvathipuram. Late G. Kurmanadha Patro was the only son of his father late Sitarama Patro through his legally wedded wife Seetamma @ Subadramma. Sitarama Patro died on 02.05.1954 and was residing during his lifetime at Visakhapatnam where he was working as Huzur Sheristadar in the Office of the District Collector.

3. Sitarama Patro also lived with a lady by name Nulu Narasamma, who was allegedly his mistress, during his lifetime. They had a daughter by name Kanaka Mahalakshmi and a son by name Ganapathi Rao. Narasamma also had another daughter by name Subhadramma @ Bojjamma (hereinafter referred to as "Bojjamma"). Bojjamma was married to one Bodla Ramakrishna and through him

had three sons and three daughters. Bodla Satyanarayana (Defendant) is one of the sons of Bojjamma through Bodla Satyanarayana. It is alleged that through Bojjamma also, Sitarama Patro had a son by name G. Nagaraju.

4. Kurmanadha Patro died on 02.07.1984 leaving behind his children, the plaintiffs, as his legal heirs. Kanaka Mahalakshmi expired in 1983 leaving behind a daughter by name Bhanumathi. Bojjamma expired on 14.09.1987. Nagaraju the son of Sitarama Patro and Bojjamma passed away on 15.10.1960.

5. Item No. 1 of plaint schedule property which is a house bearing No. 5/154 in Daba Gardens, Visakhapatnam was purchased under registered sale deed Ex. B. 1 on 01.11.1944 in the name of G. Nagaraju, the son of Bojjamma through Sitarama Patro. The document recited that the consideration for the said purchase was paid by Bojjamma from her Streedhana and through one V. Satyanarayana Raju. Item No. 2 of the plaint "A" schedule property, which is a house bearing No. 5/154-A in Daba Gardens, Visakhapatnam was constructed in a vacant site of extent 608 Sq.yds. purchased under Ex. B. 2 registered sale deed dt. 13.04.1945 also in the name of G. Nagaraju for a sum of Rs. 1500/-. This document recited that consideration was paid by V. Satyanarayana Raju on behalf of the purchaser to the vendor.

6. A Will Ex. A. 3 dt. 04.04.1953 was executed by Sitarama Patro during his lifetime. Under the said Will, item No. 1 of the plaint schedule property was bequeathed to Nagaraju and in case Nagaraju died without attaining majority, it would devolve on Kurmanadha Patro, and through him on the plaintiffs. Sitarama Patro further directed under the said Will that on his death, item No. 2 of the plaint schedule property shall devolve on Bhanumathi, his granddaughter through his daughter Kanaka Mahalakshmi and in case of her death either prior to her marriage or prior to giving birth to any child, it would devolve on Nagaraju; in case Nagaraju was not alive by then, then it would devolve on Kurmanadha Patro and through him to his sons i.e., the plaintiffs.

7. This Will was presented for registration by Kanaka Mahalakshmi after the death of Sitarama Patro but it was withdrawn by her before its registration on 30.06.1954. Subsequently, an application was filed by Bojjamma for its certified copy. Thereupon, proceedings Ex. B. 4 dt. 31.07.1954 were issued by the Jt. Sub-Registrar, Visakhapatnam informing these facts to Bojjamma. But a registration extract Ex. B. 3 of the said Will was issued to the defendant. It is pertinent to note that in Ex. A. 3, there are signatures of two attestors by name V. Varahalu (PW. 2) and K. Srinivasa Chari but in Ex. B. 3, the registration extract of Ex. A. 3, there is only signature of one attestor V. Varahalu (PW. 2).

8. The plaintiffs contended that both the items in the plaint schedule are joint family properties of Sitarama Patro and Kurmanadha Patro, acquired by improving an ancestral nucleus with their joint exertions; Sitarama Patro neglected his wife Seetamma and Kurmanadha Patro and lived with Narsamma and Bojjamma; he had no authority to execute a Will in respect of the above

properties; such a disposition is contrary to law and not binding on Kurmanadha Patro and after his death, on the plaintiffs. After the death of Sitarama Patro, Kurmanadha Patro made many a demand for delivery of the plaint schedule property to him, but was unsuccessful; Narsamma and Bojjamma entreated Kurmanadha Patro that they may be allowed to reside in the above properties until their death and this request was acceded to by Kurmanadha Patro out of sympathy; that Nagaraju died in 1960 without attaining the age of majority; after the death of Narsamma and Bojjamma, the plaintiffs are entitled to inherit the plaint schedule property; the Will Ex. A. 3 allegedly executed by Sitarama Patro is not true, valid and binding on the plaintiffs; even otherwise, as the legatee Nagaraju died without attaining majority, the property devolved on Kurmanadha Patro and on his death, on the plaintiffs. After the death of Narsamma and Bojjamma, the plaintiffs went to the plaint schedule properties to take possession, but they found the defendant to be in possession of the said property; that defendant refused to do deliver possession of the plaint schedule properties to plaintiffs; the defendant is only a trespasser and his possession of the plaint schedule properties is illegal, unauthorized and unlawful. They contended that he is liable to be evicted and possession of the property be delivered to them after declaring their title with future profits and costs.

9. The defendant filed a written statement refuting the plaint averments. He contended that the suit is barred by limitation; that Bojjamma was married to Bodla Ramakrishna and while she was pregnant with the defendant, she came away from her husband's house unable to bear the ill-treatment meted out to her and started living with Sitarama Patro; they had a son by name Nagaraju; he died in 1960 unmarried; it is not true to contend that Narsamma and Bojjamma requested Kurmanadha Patro to permit them to live in the plaint schedule properties until their death and that he accepted the said request; Kanaka Mahalakshmi, who was unsuccessful in making a claim over the suit schedule properties, had joined hands with the plaintiffs and got the suit filed with false allegations; she attempted to get the Will registered but it failed; she also instigated a tenant in item No. 2 of the plaint schedule property to file a petition u/s 6 of the Madras Rent Control Act as HRC No. 71/54 for permission to deposit rents, due to dispute regarding ownership of the property, against Bojjamma which was dismissed on 28.02.1955 and the appeal against the said order was also rejected on 17.10.1955; Sitarama Patro had no title to the plaint schedule property and he could not have executed any Will in respect thereto; the plaintiffs have no title whatsoever to the plaint schedule property; the suit is a speculative suit filed only to harass the defendant; that the plaintiffs, claiming to be indigent persons filed OP. No. 11 of 1988 but it was dismissed on 06.09.1988 by the I Addl. Sub-Ordinate Judge, Visakhapatnam and thereafter the present suit was filed, after more than two years.

10. It is also alleged that the Will Ex. A. 3 purported to have been executed by Sitaram Patro was placed on the notice board of the Registrar's office inviting objections on or before 07.08.1954; Bojjamma objected through a letter dt.

28.07.1954; in reply, the Jt. Registrar informed Bojjamma vide letter dt. 31.07.1954 that the said Will was withdrawn by the present ant on 30.06.2004; that the said Will is false as the plaintiffs had added the signature of a second attestor and affixed Court Fee stamps with a denomination in paise which were not in use in 1953 as only annas were in use at that time. He also contended that the suit schedule properties were purchased by late Bojjamma in the name of her minor son Nagaraju who was the step brother of this defendant (as he was born out of cohabitation with Sri Sitarama Patro after she came away from her husband Ramakrishna, the father of this defendant); the properties were purchased with the Streedhana of Bojjamma and she constructed a building in the name of late Nagaraju; that as per HRC. No. 71/54 of 31.12.54, Bojjamma purchased site 5/154 and 5/154-A with her "Streedhana"; that after the death of late Nagaraju in 1960, Bojjamma became the owner of the properties by way of succession and she was in possession and enjoyment of the property as absolute owner; she got her name mutated in the municipal records, started paying taxes and also filed suits against the Visakhapatnam Municipality i.e., O.S. Nos. 1199/76 and 1222/76 questioning the enhancement in the property tax which were subsequently decreed; an appeal filed by the Municipality against the decree and judgment in the suit O.S. No. 1199/76 was also dismissed; Bojjamma also defended the HRC. No. 71/54 filed by tenant as she was collecting rents and subsequently filed a rent control case RCC. No. 73/75 for eviction of the tenant in a portion of item No. 2 of the plaint schedule property, which vacant portion she wanted to give for occupation to the daughter and son-in-law of the defendant.

11. He also contended that the defendant as well as his two sons and three daughters were very close and affectionate to Bojjamma and they were all living at item No. 1 of the plaint schedule property which is evident from the letters received by defendant; that neither Sitaram Patro nor Kurmanadha Patro had any right or claim over the plaint schedule property, that they also never raised any claim over the same and they could not also have made any claim; assuming that late Sitaram Patro or Kurmanadha Patro had any right in the property, the same is barred by limitation since late Bojjamma was enjoying the properties as its absolute owner in her own right openly and continuously to the knowledge of everyone including the plaintiffs and she perfected her title to the property by adverse possession. He alleged that during her life time Bojjamma executed a Will dt. 02.01.1987 in a sound and disposing state of mind and bequeathed item No. 1 of the plaint schedule property to the defendant and to his two sons jointly with full and absolute rights and item No. 2 of the plaint schedule property to the daughters of the defendant with full and absolute rights; since she was suffering from Parkinson's disease with tremors in the hands for a period of three years prior to her death she could not sign the Will but put her thumb impression thereon; thus the defendant, being the only legal heir of late Bojjamma, and also as per the terms of the Will, he and his sons and daughters are entitled to item No. 1 and 2 of the plaint schedule property.

12. The trial Court framed the following issues and additional issues:

1. Whether the plaintiff is entitled to ask for eviction?
2. Whether the plaintiff is entitled to any future profits, if so, what amount?
3. Whether the suit is barred by limitation?
4. Whether the plaintiff has no title to the property?
5. To what relief?

Additional Issues:

1. Whether the plaintiff is entitled for the declaration sought for?
2. Whether the relief of declaration is barred by time?

13. The 5th plaintiff was examined as P.W. 1 and one of the attesters of Ex. A-3 Will was examined as P.W. 2. P.W. 3 is said to have accompanied the plaintiff at the time of demanding Nulu Narasamma and Kanaka Mahalakshmi to vacate the house. The plaintiffs also marked Exs. A-1 to A-6. The defendant was examined as D. W.I and D. Ws.2 and 3, the attesters of the will Ex. B-11 executed by Bojjamma were also examined. The defendant marked Exs. B-1 to B-12.

14. The Court below dismissed the suit by judgment and decree dt. 24-07-1995. It held that the burden is on the plaintiffs to prove their case that the two items of plaint schedule property are joint family property; that the pleading in the plaint that Sitaram Patro and his son by their joint exertions and from their joint family nucleus purchased the property, is ambiguous; except the oral evidence of P.W. 1 and the recitals in Ex. A-3 Will, there is nothing to prove the above facts; P.W. 1 was not present at the time of execution of the said Will; P.W. 2, the alleged attester of the Will, did not state that the testator has seen the two attesters signing on Ex. A-3; that when Ex. A-3 is compared with Ex. B-3, it is clear that the signature of the second attester was obtained subsequently and therefore no credence can be given to Ex. A-3; merely because there is a recital in Ex. A-3 that the testator acquired the suit property in the name of Nagaraju, the Court cannot place reliance on it in the absence of independent evidence showing the acquisition of the property by the testator; Exs. B-1 and B-2 under which the two items of plaint schedule were purchased do not show that consideration for their purchase passed from the testator; thus the plaintiffs failed to prove that the testator Sitaram Patro and his son Kurmanadha Patro by their joint exertions acquired the said properties; on the other hand the plea of the defendant that the property was not the property of the testator and belonged to Nagaraju is supported by Exs. B-1 and B-2; the other documents filed by the defendant show that Bojjamma exercised rights of ownership in respect of the plaint schedule properties; and therefore the plaintiffs are not entitled to the relief of declaration of title, eviction of the defendant or future profits. It also held that the relief of declaration claimed by the plaintiffs was not barred by time and the defendant failed to prove the plea of adverse possession raised by way of alternative plea.

15. Challenging the same, the present appeal is filed by plaintiffs. Pending appeal appellant No. 1 died and appellant Nos. 7 to 9 were brought on record as his Legal Representatives. Appellant No. 2 also died and appellant Nos. 11 and 12 are his Legal Representatives. Appellant No. 6 also died and appellant No. 10 is his legal representative. The sole respondent also died and respondent Nos. 2 to 7 are his legal representatives.

16. Heard Sri Ch. Sudhakar Babu, learned counsel for the appellants and Sri V. Ravinder Rao, learned counsel for the respondents.

17. The learned counsel for the appellants contended that the findings of the trial Court are contrary to law, weight of evidence and probabilities of the case; that the trial Court ought to have held that the plaintiffs have proved that the plaint schedule property is the joint family property of Sitaram Patro and his son Kurmanadha Patro; that the defendant had no right, title or interest in the plaint schedule properties; that the recitals in Ex. A-3 Will also prove that the property was purchased by late Sitaram Patro in the name of Nagaraju; Nagaraju died before attaining the age of majority; that the plaintiffs have proved the execution of Ex. A-3 by examining P.W. 2; therefore the judgment and decree of the trial Court be set aside and the appeal be allowed.

18. The learned counsel for the respondents contended that the findings of the trial Court are proper and correct and do not warrant any interference by this Court in appeal; the plaintiffs have not proved that the plaint schedule properties are the joint family property of Sitaram Patro and Kurmanadha Patro; they are the properties of Nagaraju in whose name they were purchased by his mother Bojjamma under Exs. B-1 and B-2; even the consideration for the said purchase was not paid by Sitaram Patro; Nagaraju was a major at the time of his death on 15-10-1960; even if the Will Ex. A-3 is true, still the plaintiffs cannot succeed to the plaint schedule property in view of the fact that the conditions for the properties to devolve on plaintiffs were not fulfilled; and therefore the appeal be dismissed.

19. I have noted the submissions of both sides.

20. According to me, the main issue to be considered in the appeal is whether the plaint schedule properties are the properties of Sitaram Patro or not? Only if the plaint schedule properties belong to Sitaram Patro, he would be competent to dispose of the same by a Will. Only if this question is answered in favor of the appellants/plaintiffs, the question whether Ex. A-3 Will is true and valid can be gone into.

21. In my opinion, the pleading of the plaintiffs in the plaint as to the nature of the property is vague. They stated that Sitaram Patro and Kurmanadha Patro improved the ancestral nucleus out of their own joint exertions and acquired the plaint schedule properties. What was the ancestral nucleus which financed the purchases of the plaint schedule properties has not been explained by the plaintiffs in their evidence. It was open to plaintiffs to contend that the plaint

schedule properties were either acquired out of income from an ancestral nucleus or that they were acquired by joint exertions of Sitaram Patro and his son Kurmanadha Patro, but they cannot raise both pleas. Even the pleading of the plaintiffs that Sitaram Patro and his son Kurmanadha Patro acquired the property by their joint exertions is not believable in view of their averment that Sitaram Patro was living with his mistress Nulu Narasamma and was neglecting his wife Seetamma and Kurmanadha Patro. I therefore hold that the plaintiffs failed to prove that the plaint schedule properties are the joint family properties of Sitaram Patro.

22. Except the recital in Ex. A-3 that plaint schedule property is his self acquired property, there is no other evidence on record to show that Sitaram Patro had any role in their acquisition. P.W. 1 admits as much in his evidence. On the contrary Ex. B-1, the sale dt. 01-11-1944 under which item No. 1 of the plaint schedule was purchased, indicated that the consideration for the said purchase was paid by Bojjamma from her Streedhana and that the amount was handed over by one V. Satyanarayana Raju to the vendor. Even Ex. B-2, the sale deed dt. 13-04-1945 under which item No. 2 of the plaint schedule was purchased indicates that the consideration for the said purchase was paid by V. Satyanarayana Raju. Both the properties are purchased in the name of Nagaraju represented by his mother Bojjamma and Nagaraju is described as a minor son of Sitaram Patro in both the documents. Prima facie therefore Nagaraju is the owner of both items of the plaint schedule and Sitaram Patro cannot claim to have any right, title or interest therein. If so, Sitaram Patro had no authority to execute Ex. A-3 Will in respect of the plaint schedule properties.

23. It is curious to note that in the plaint the plaintiffs pleaded that Sitaram Patro had no right to execute any Will in respect of the plaint schedule properties but when trial commenced, they shifted their stand and sought to contend that they are entitled to the plaint schedule property in view of the Will Ex. A-3.

24. Although the Will Ex. A-3 is alleged by the plaintiffs to be in the handwriting of Sitaram Patro, except P.W. 1, none was examined to prove the handwriting of Sitaram Patro. No document executed by Sitaram Patro other than Ex. A-3 is filed by plaintiffs to prove that the handwriting on Ex. A-3 is that of Sitaram Patro. P.W. 1 claimed to be acquainted with the handwriting of Sitaram Patro. Sitaram Patro admittedly died on 02-05-1954 and Ex. A-3 was executed on 04-04-1953. P.W. 1 claimed to be aged 49 years when he was examined in chief on 14-06-1994. Therefore he would have been born in 1945 i.e. he was only 8 years old at the time of execution of the Will Ex. A-3. If so, it is difficult to believe that P.W. 1 can prove that the handwriting on Ex. A-3 is that of Sitaram Patro.

25. P.W. 2 claimed to be attester of Ex. A-3 but he did not state that both attestors signed the Will in the presence of the executant Sitaram Patro. In fact the second attester's name is K. Srinivasa Chari but P.W. 2 stated that the name of the second attester is Krishnamachari. This proves that PW 2's version of the

execution of A3 is highly doubtful. Therefore I hold that execution of Ex. A-3 Will is not proved by the plaintiffs.

26. Even otherwise, as per the recitals in Ex. A-3, item No. 1 of the plaint schedule was bequeathed to Nagaraju and in case of his death before attaining the age of majority, it was directed to devolve on Kurmanatha Patro and his sons i.e. the plaintiffs. Although the plaintiffs contended that Nagaraju died before attaining the age of majority, P.W. 2 stated that subsequent to the death of Sitaram Patro, he assisted Nagaraju to secure admission to the medical college, Visakhapatnam. Therefore, Nagaraju would have attained majority by then. This is corroborated by D.W. 1 who stated that Nagaraju was aged 3 years by the date of purchase of items 1 and 2. Therefore the date of birth of Nagaraju would be 1941. Since he died in 1960, his age at the time of his death would be around 19 years. So it is clear that he died after attaining majority. In this view of the matter, the plaintiffs would not inherit item No. 1 of the plaint schedule even if the will Ex. A-3 is true and valid. Likewise item No. 2 of plaint schedule was bequeathed to Bhanumathi, the daughter of Kanaka Mahalakshmi and only if she died prior to her marriage or prior to giving birth to a child, this item would devolve upon Kurmanadha Patro and the plaintiffs. But the plaintiffs have not adduced any evidence as to her death or that she died prior to her marriage or before giving birth to a child. Therefore, even item No. 2 of the plaint schedule would not devolve upon the plaintiffs assuming that the Will Ex. A-3 is true.

27. After the death of Sitaram Patro in 1954, Kurmanadha Patro, if he or the plaintiffs had any right, title or interest in the plaint schedule properties, would not have allowed Nulu Narasamma or Bojjamma to enjoy these properties. The plaintiffs have not marked even a legal notice issued by Kurmanadha Patro to Bojjamma or Narsamma. Obviously, he was aware that neither he nor his children had any right in the properties and therefore, he remained silent till his death on 02-07-1984. When according to plaintiffs Sitaram Patro had deserted Seetamma and Kurmanadha Patro and was living with Nulu Narasamma or Bojjamma, it is unlikely that Kurmanadha Patro would sympathetically consider any request by Nulu Narasamma or Bojjamma to enjoy the plaint schedule properties peacefully.

28. The defendant has contended that Bojjamma executed Ex. B-11 unregistered Will on 02-01-1987 bequeathing the plaint schedule properties to the defendant. The defendant examined D. Ws. 2 and 3 who attested the said Will. The learned counsel for the appellant has not been able to point out any discrepancy in their evidence. Therefore, I hold that the execution of Ex. B-11 is proved by the defendant. Admittedly, the executant of Ex. B-11 died on 14-09-1987. Therefore, on her death the plaint schedule properties devolved upon the defendant.

29. In this view of the matter, I hold that the plaintiffs do not have any right, title or interest over the plaint schedule properties and that they belong to the defendant. I do not find any merit in the appeal.

30. Accordingly the appeal is dismissed with costs. Miscellaneous applications if any pending in this appeal shall stand closed.