
(2006) 11 AP CK 0104
In the Andhra Pradesh High Court
Case No : SA No. 64 of 1997

Ghanta Krishna Das

APPELLANT

Vs

Ghanta Srihari Rao and Others

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 99

Citation : (2007) 3 ALD 125 : (2007) 4 ALT 308

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Adinarayana Rao, for the Appellant; Subba Rao Korrapati, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Defendant in O.S. No. 95 of 1978 on the file of the Subordinate Judge, Chirala, is the appellant. Basically, the dispute is between two brothers.

2. The appellant, 1st respondent and one Mr. Madhusudhana Rao are the sons of late Garataiah. Madhusudhana Rao is said to have been given in adoption to the family of one Mr. Bakkaiah. Partition is said to have taken place twice, viz., in the year 1957 and 1964 among the appellant and the 1st respondent, and their father. An extent of two acres of wetland, in D. No. 447 of Karamchedu Village, is with the family, on lease, for 99 years. The leasehold rights, in respect of the land, were allotted to the father, in the partition.

3. The 1st respondent filed O.S. No. 356 of 1970 in the Court of District Munsif, Chirala, against the appellant, for the relief of perpetual injunction, in respect of this very property. He pleaded that their father conveyed the said property to him through an agreement dated 2-9-1959, and that ever since then, he is in possession and enjoyment of the property. He complained that the appellant started interfering with his possession. The appellant, on the other hand, pleaded

that taking into account the unequal partition, that took place in the year 1957 and 1964, their father passed on the said property to him, in the year 1966. The trial Court dismissed the suit by observing that the property remained in joint, and that no relief of perpetual injunction can be granted to any of the parties.

4. Obviously, in view of the observation of the trial Court, in O.S. No. 356 of 1970, the 1st respondent filed the present suit i.e., O.S. No. 95 of 1978 for the relief of partition, against the appellant. During the pendency of the suit, the children of the 1st appellant i.e., respondents 2 to 5 got themselves impleaded as plaintiffs, stating that their father became a man of unsound mind. Another development, that took place during the pendency of the suit, is that the appellant filed O.S. No. 278 of 1986 in the Court of District Munsif, Parchur, against the 1st respondent and certain others, for the relief of perpetual injunction. The suit was decreed, but it was dismissed for default against the 1st respondent.

5. The appellant filed a written-statement in O.S. No. 95 of 1978, stating that in view of the partition, that has taken place in the year 1957 and 1964, the suit schedule property is no longer available for partition, and that he had acquired exclusive rights in respect of the suit land, from his father.

6. The trial Court passed a preliminary decree through its judgment dated 9-3-1993. Aggrieved thereby, the appellant filed A.S. No. 30 of 1993 in the Court of Additional District Judge, Ongole. The appeal was dismissed on 4-3-1996. Hence, this second appeal, against the concurrent judgments and decrees passed by the Courts below.

7. Sri B. Adinarayana Rao, learned Counsel for the appellant submits that the Courts below committed errors in treating the property as being available for partition, though, undisputedly, it was the subject-matter of the two partitions, between the appellant and the 1st respondent, and their father, in the year 1957 and 1964. He contends that the trial Court was not justified in treating the judgment in O.S. No. 356 of 1970, as not operating as res judicata, on the one hand, and holding that the property is available for partition, on the other hand. He submits that the same approach was adopted by the trial Court, vis-a-vis the judgment and decree in O.S. No. 278 of 1986, and that the preliminary decree cannot be sustained in law.

8. Sri Subba Rao Korrapati, learned Counsel for the respondents, on the other hand, submits that the appellant was a party to O.S. No. 356 of 1970, wherein it was categorically held that the suit schedule property was not partitioned, and having permitted the said finding to become final, the appellant cannot raise an objection for its partition. He contends that even assuming that there were certain minor discrepancies, or errors, that may have been committed by the Courts below, the same cannot be said to have resulted in any miscarriage of justice, and in view of Section 99 of C.P.C., they cannot be taken into account.

9. The trial Court framed as many as five issues, touching on the various facets

of controversy, between the parties. PW-1, who is the wife of the 1st respondent, and mother of the respondents 2 to 5; was examined as the only witness, and Exs.A-1 to A-11 were marked. On behalf of the appellant DWs. 1 and 2 were examined and Exs.B-1 was filed. As observed earlier, the trial Court decreed the suit.

10. The relationship between the parties is not disputed. Partition is said to have been taken place twice, among the father and his two sons i.e., the appellant and the 1st respondent, in the year 1957 and 1964. There is no dispute to the extent that the suit schedule property was allotted to the share of the father. The controversy erupted between the appellant and the 1st respondent, as to the enjoyment of the said property, even while the father was alive. While the one pleaded, that it was made over to him, through an agreement dated 2-9-1959, the other stated that it was passed on to him, by their father, in the year 1966. None of these contentions, in O.S. No. 356 of 1970, were accepted by the trial Court, and it was held that the property was joint. It may be true, that the suit was one, for the relief of perpetual injunction. However, with regard to the nature of property, particularly in the context of the enjoyment among the brothers, the finding, that it is undivided; had its own significance.

11. In the present case, the trial Court framed an issue, touching on the question, whether the judgment in O.S. No. 356 of 1970, operates as res judicata, and answered the same against the respondents. The fact, however, remains that the sole basis and immediate provocation for the respondents to file the present suit was, the finding in O.S. No. 356 of 1970, to the effect that the property is joint. It is equally binding upon the appellant. The finding recorded by the trial Court, in this regard, appears to be some-what inconsistent. All the same, the said question paled into insignificance, on account of the fact that the father died, by the time the present suit came to be filed. Whether on account of the finding recorded in O.S. No. 356 of 1970, or on account of the death of the father, that the suit land became available for partition. Therefore, the preliminary decree passed by the trial Court, ordering partition of the suit schedule property; cannot be found fault with, notwithstanding certain minor inconsistencies, that have crept into the matter.

12. It must not be forgotten, that, when so many proceedings have ensued with so much of perseverance, the adjudication is bound to proceed on certain lines, which are prone to be some-what inconsistent. However, if one examines the matter from the point of view of the actual controversy, it emerges that the suit schedule property was available for partition, between the two brothers; and the decrees passed by the Courts below cannot be found fault with.

13. No question of law, much less substantial question of law, arises for consideration in this second appeal. The second appeal is accordingly dismissed. There shall be no order as to costs.