

(1950) 09 AP CK 0001

In the Andhra Pradesh High Court

Case No : Civil Appeal No's. 892 of 1358 F. and 390 of 1355 F.

Gunde Rao and others

APPELLANT

Vs

Ramchander Rao and others

RESPONDENT

Date of Decision : 22-09-1950

Acts Referred:

Citation : AIR 1950 AP 39

Hon'ble Judges : Naik, C.J;M.A. Ansari, J

Bench : Division Bench

Advocate : Govind Rao Nagapurkar, for the Appellant; Syed Mohmad Abdulla, for the Respondent

Judgement

1. These two appeals arise out of a suit for a declaration of the plaintiffs' title to the Patwari-watan of the village Atgi. The eight annas share in the watan was held by two ladies Yamuna Bai and Yesu Bai in their widow rights and in 1338 Fasli (1928-29) it is said that Yesu Bai had transferred her share to one Kishen Rao. After the transferee's death, the mutation of name was effected in favour of Gunde Rao, Defendant No. 1. Yamuna Bai died first in Azur 1346 Fasli (October 1936) and later Yesu Bai's death occurred in Isfandar 1347 Fasli (January 1938). In Bahman 1353 Fasli (November 1943) five persons as plaintiffs instituted the declaratory suit that the two women were widows of the male members of their family and that the pedigree of the family was as follows;

2. The suit was filed against six persons and in the plaint it was alleged that the remaining eight annas shares in the watan belonged to Govind Rao, the plaintiffs' ancestor, and the two widows had executed an agreement relating to the disputed eight annas share in favour of plaintiff No. 1, that the defendants Nos. 1 to 5 were strangers to the family and during the life time of the widows the plaintiffs had no cause of action, that the defendant No. 6 was in collusion with the rest of the defendants and had refused to institute the suit, hence the plaintiffs should be given a declaratory decree regarding their title.

3. The defendants Nos. 1 to 5 in their joint written statement denied the title of the plaintiffs and claimed to be entitled to those shares according to another pedigree attached to their written statement. Another plea raised in the written statement was that as defendant No. 6 was a nearer heir the plaintiffs had no right to file the suit. This Defendant No. 6 appears to have filed no written statement.

4. The trial Court gave to plaintiff No. 1 alone a declaratory decree to the extent of twelve annas share in the watan, but dismissed the suit as regards Yamuna Bai's four annas share was concerned holding that this part of the plaintiff's suit was barred by limitation. Against the decree, both parties to the suit appealed, and the lower appellate Court, sustaining the decision of the original Court has dismissed both the appeals. Against these dismissals two second appeals have been filed in this Court.

5. We are of opinion that both the lower Courts have erred in declaring plaintiff No. 1 to be entitled to Yesu Bai's share as a heir according to Hindu law, and to this extent, the defendant's appeal must succeed. According to the pedigree relied upon in the plaint, defendant No. 6 is a nearer relation to the two husbands of the widows than the plaintiffs. He is the husband's uncle's son's son, whereas plaintiff No. 1, in whose favour the decree has been given is a degree lower, that is to say, he is the last full owner's paternal uncle's son's son's son. The suit though a declaratory one has not been filed during the life-time of any widow on behalf of the entire reversionary body. According to Hindu Law after a widow's death, the estate reverts to her husband's nearest male agnatic relation, then alive. In this case, defendant No. 6 is such a relation and the estates vest in him alone. These estates in defendant No. 6 are not ancestral, for it had not devolved on him from his three immediate ancestors, that is to say, from his father, grandfather or great grandfather. Therefore, the plaintiffs Nos. 3 to 5 cannot claim any right in the property during their father's life-time, and have no cause of action if the estates be lost. As regards plaintiff No. 1, he is one degree lower than defendant No. 6 and when the succession opened on the deaths of the widows, he is excluded by this defendants. According to Hindu Law, during the life-time of this defendant he has no right, and his succession as an heir when plaintiffs Nos. 3 to 5 are alive, is very remote. The law relating to declaratory suit on behalf of the reversionary body during the life-time of a widow is based on a different principle. During such a life-estate the right to challenge the alienation is of the entire reversionary body and the nearest reversioner exercises the right on behalf of all; and if the next reversioner fails to do so, then the remoter reversioner brings such a suit to safeguard the common interest. This rule cannot apply where there is no life estate & the property has become vested in a reversioner as his absolute estate. He is the starting point of future devolution, and the persons claiming the property after him have nothing but "spes successionis" in his life-time. The result is that he being the full owner of the property no other members of the family have any right in his life-time, which can be declared by Court of law.

6. It is argued on behalf of the plaintiffs that the watan property should be treated as joint family property, which cannot be transferred to strangers, and in order to save it from being lost to the family, each member of such a family has a right on failure of the person immediately entitled to sue for a declaration of the family's title. We cannot accept this argument. The suit has not been framed to save the eight annas shares from being lost to the family. The main prayer in the suit is the declaration of the right of plaintiff No. 1 to have the patta of the entire 16 annas of the watan in his name with the plaintiffs Nos. 2 to 5 as his shikmidars. During the life-time of defendant No. 6 none have any such right to the extent of the estates which have devolved because of the widow's death. In order to grant the declaration the civil Court has to follow the personal law of succession of the claimants. If according to that law, the Court finds that the claimants are not entitled it cannot go out of its way to declare something for which the claimants according to their personal law are not entitled. Indeed, the lower Courts have declared only plaintiff No. 1 to be so entitled and we fail to understand, how he can be so entitled in the life-time of defendant No. 6. The document of surrender by the widows in favour of this plaintiff is not in favour of the nearest reversioner, nor is it in favour of the entire reversionary body; and it fails to be of any legal validity. In the hands of defendant No. 6 the property cannot be the joint property of the family and we cannot treat it as such in disregard of his personal law.

7. Both the lower Courts have, therefore, erred in declaring plaintiff No. 1 entitled to the widow Yesu Bai's four annas share. Any decision on the question as to whether the claim to the widows' shares were within time or not is entirely unnecessary. The suit should have been dismissed on the obvious ground that defendant No. 6 being the nearest reversioner was alone entitled to the estates of the widows and he, having not chosen to file any suit, his failure does not give the plaintiffs a right to institute the suit so far as the widows' shares are concerned. On this ground alone the suit as regards Yesu Bai's four annas share fails and should be dismissed. We, therefore, allow the defendants' Appeal No. 892 of 1358 Fasli to this extent and dismiss the Plaintiffs' appeal No. 390 of 1355 Fasli, set aside the decrees of the lower Court, as far as the share of this widow is concerned, and dismiss the suit as regards, the eight annas shares in the watan which reverted on the widows' death on the ground that plaintiffs have no cause of action. The defendant-appellant Gande Rao, Sheshgir Rao and Srinivas Rao are entitled to their proportionate costs as against plaintiff No. 1. This judgment will cover both the appeals.