
(2022) 11 TEL CK 0055
In the Telangana High Court
Case No : Second Appeal No. 108 Of 2014

K Manikappa

APPELLANT

Vs

Rani Meenakshi 6 Others

RESPONDENT

Date of Decision : 16-11-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100

Citation : (2022) 11 TEL CK 0055

Hon'ble Judges : G. Anupama Chakravarthy, J

Bench : Single Bench

Advocate : M Rama Rao, K B Ramanna Dora

Final Decision : Dismissed

Judgement

1. This appeal is arising out of the judgment and decree in A.S.No.34 of 2010, dated 28.01.2013 on the file of I Additional District Judge, Medak at Sangareddy, confirming the judgment and decree of the trial Court dated 21.07.2010 in O.S.No.13 of 2008 on the file of Senior Civil Judge, Zaheerabad, Medak District.

2. It is pertinent to mention that plaintiff was a minor at the time of filing suit and was represented through her grandfather Mallappagiri. For the sake of convenience, the parties are referred to as arrayed before the trial Court.

3. Heard learned Counsel for the appellant as well as the counsel for the respondents and perused the record.

4. The suit was filed for partition and separate possession of lands in Sy.Nos.20/A1, 74/AA, 122/A, 65/AA, 66/A/2, 66/AA and 66/E, admeasuring Ac.3-20 gts., Ac.4-14 gts., Ac.7-15 gts., Ac.3-24 gts., Ac.5-17 gts., Ac.0-06 gts., Ac.0-32 gts., and Ac.0-33 gts., respectively and houses bearing Nos.3-132 and 1-32/3, situated at Rejinthal village, Nyalkal Mandal, Medak District.

5. The plaintiff's father, namely, Shivappa died 14 years prior to filing of suit due to electric shock in Rejinthal village, and by that time, the plaintiff was only four

months old in the womb of her mother. After the birth of the plaintiff, her mother Vasundhara got married to one Shankarappa of Ibrahimpur village. Since the date of her marriage, the minor/plaintiff was residing at her maternal grandfather's house at Bidar. Defendant No.1 is the paternal grandfather of the minor/plaintiff and defendant Nos.2 and 3 are the sons of defendant No.1 and paternal uncles of the plaintiff.

6. The plaintiff, being the grand daughter of defendant No.1, had interest and right over the property as per Hindu Succession Act, therefore, preferred the suit for partition. 'A' schedule property consists of landed property and 'B' schedule property consists of houses belonging to the joint family. It is the further case of the plaintiff that when the plaintiff's maternal grand father demanded for partition of the property, the defendant No.1 along with his two sons, agreed to give Ac.4-10 gts., of land in Sy.No.74/A in the presence of elders, but did not affect the partition, and therefore, she was constrained to file the suit.

7. On the other hand, defendant Nos.1 to 3 have filed common written statement denying all the averments of the plaint including the death of Shivappa due to electric shock about 15 years back. It is further contended in the written statement that the plaintiff has to prove that she is the daughter of Shivappa and they denied the right of plaintiff over the plaint schedule property and further disputed the legitimacy of the plaintiff, contending that she did not born to Shivappa.

8. Defendant No.4 filed a separate written statement contending that her son Shivappa died due to electric shock long back, but she was not aware whether the plaintiff's mother conceived plaintiff prior to the death of her son.

9. The other defendants have also filed written statement admitting the averments made by defendant Nos.1 to 4 in their written statements.

10. Basing on the pleadings of the parties, the trial Court has framed the following issues for trial:

"1. Whether the plaintiff is entitled for partition and separate possession of the suit schedule properties to an extent of 1/4th share ?

2. Whether the suit properties are property valued and this Court has got jurisdiction to try the suit ?

3. To what relief ?"

The following additional issues were framed subsequently:

"1. Whether the daughter- in-law of D.1 namely Mahadevi purchased the land in Sy.No.20/A/1 by selling her gold ornaments and by borrowing money from parents to clear-off joint family debts

?

2. Whether the husband of D.4 purchased the land bearing Sy.No.65/A, 65/AA

and 66 with joint family funds in the name of D.2 who is elder son of D.4, as such, the properties standing in the name of 2nd defendant are also the joint family properties, but not the exclusive properties of D.2 ?

3. Whether 4th defendant being the mother is entitled to a share in the share of Shivappa as she being the Class-I heir along with other defendants in the joint family properties ?

4. Whether the defendant No.5 is entitled a share in the share of deceased Shivappa as she being the Class-I heir along with other defendants and plaintiff in the joint family properties ?”

11. On behalf of plaintiff, PWs.1 to 4 were examined and Exs. A-1 to A-11 were marked. On behalf of defendants, Dws.1 to 7 were examined and Exs.D-1 to D-5 were marked.

12. The trial Court, after considering the entire material on record, has decreed the suit by passing a preliminary decree for partition and separate possession of 2/15th share (i.e. $\frac{1}{10\text{th}} + \frac{1}{30\text{th}} = \frac{2}{15\text{th}}$) of the plaintiff, 1/30th share of defendant Nos.5 and 6 each in the share of late Shivappa in the suit schedule property and 1/5th share of defendants 1 to 3 and 6 each in the schedule properties.

13. Being aggrieved by the same, defendant No.2 preferred appeal before the I Additional District Judge, Medak. On hearing the arguments, the first appellate Court framed the following points for consideration:

“1. Whether the plaintiff established herself as daughter of late Shivappa and her right to seek partition ?

2. Whether the properties standing in the name of defendant No.2 are his self-acquired properties or joint family properties and available for partition ?

3. Whether the judgment of the trial Court is sustainable ?

4. To what relief ?

14. After considering the entire material on record, the first appellate Court has dismissed the appeal, confirming the judgment and decree of the trial Court.

15. Being aggrieved by the same, defendant No.2 has preferred this Second Appeal raising the following substantial questions of law:

“a. Whether the Courts below are right in throwing the burden on the Appellant to prove that Suit survey numbers are not joint family properties but separate owned properties instead of throwing the burden on the plaintiff who claim suit lands as joint family properties ?

b. Whether the Courts below are right in holding the properties standing in the name of Appellant and his sons are joint family properties without framing the issue and without plaintiff led the evidence to show that it is a Joint Family

properties ?

c. Whether the courts below are right in decreeing the suit when properties standing in the name of Appellant's sons namely K.Basalingappa and Amarnath, without making them as parties for partition being joint family members ?"

16. This appeal is coming up for admission since 2014 and it underwent numerous adjournments. On perusal of the substantial questions of law as raised in the grounds of appeal, it is evident that the same are based on factual findings of Courts below, but not on law.

17. A perusal of the record discloses that there are no recitals in the pleadings before the Courts below with regard to any of the aforesaid substantial questions of law raised in the Second Appeal. It is settled law that no party can take any new pleading or raise any new questions of law, without there being any pleading to that effect in the plaint/written statement filed before the trial Court, as has been held by the Hon'ble Supreme Court in Ponnayal Alias Lakshmi v. Karuppannan (dead) through Legal Representative Sengoda Gounder & another (2019) 11 SCC 800.

18. Admittedly, the trial Court as well as the appellate Court have considered the entire oral and documentary evidence on record and gave findings on facts that the property is a joint family property and the plaintiff is the daughter of Shivappa. It is the specific contention of the learned counsel for the appellant that the trial Court has not framed an issue "whether it is a joint family/ancestral property or self-acquired property ?". A perusal of the issues framed by the trial Court show that the contention of the appellant that the trial Court has not framed the issue as to whether the properties are standing in the name of joint family, is not at all tenable.

19. It is the further contention of the learned counsel for the appellant that the appellant's sons, namely, Amarnath and Baswa Lingappa are not made parties to the suit for partition, as the properties belong to the joint family. This contention also cannot be taken into consideration as the defendants have not taken any such plea in the written statement that the suit is bad for non-joinder of necessary parties. In the absence of pleadings before the trial Court, those aspects cannot be considered in this appeal, by way of substantial question of law as the appellant kept silent all through the litigation, before the trial Court as well as before the appellate Court.

20. Further, there is limited scope under Section 100 of CPC while dealing with the appeals by the High Courts. In a Second Appeal, if the High Court is satisfied that the case involves a substantial question of law, only then, the Court can interfere with the orders of the Courts below. On perusal of the entire material, this Court is of the considered view that the orders of the Courts below are not perverse and there is no misreading of evidence, and therefore, it is not proper to interfere with the concurrent fact findings of the Courts below, in the absence of substantial question of law. Therefore, the Second Appeal deserves to be

dismissed.

21. In the result, the Second Appeal is dismissed at the stage of admission, confirming the judgment of the I Additional District Judge, Medak at Sangareddy, in A.S.No.34 of 2010, dated 28.01.2013. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.