

(1964) 07 AP CK 0025

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 55 of 1963 and Civil Miscellaneous Petition No. 6335 of 1963

Kantiti Narsanna and Others

APPELLANT

Vs

Kantiti Satyavati

RESPONDENT

Date of Decision : 14-07-1964

Acts Referred:

Evidence Act, 1872 — Section 115

Registration Act, 1908 — Section 17, 49

Citation : AIR 1966 AP 107

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J

Bench : Division Bench

Advocate : M. Suryanarayana Murthy, for the Appellant; B.V. Subrahmanyam, General and P.P. Surya Rao, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, J.—This is an appeal under the Letters Patent against the Judgment of Kumarayya J. in A. S. 39 of 1959, by which the learned Judge decreed the plaintiffs suit for partition of items 1 to 8 of plaint A schedule lands in modification of the lower court's decree and confirmed the decree of the lower court for a partition of the entire plaint B schedule properties (house properties) and Items 1 to 7 of plaint C schedule properties (moveables).

2. Defendants 1 to 3 are the present appellants, defendants 2 and 3 being the sons of the 1st defendant. The suit was brought by the widow of the 1st defendant's brother, Kanteti Satyanarayana, who died on 14-12-1947 leaving him surviving his widow the plaintiff.

3. The main defences to the suit were: firstly that the plaintiff had given up her claim to a share in the family properties and elected to receive only maintenance under a family settle, ment dated 4-11-1948 and as such it is not now open to her lo claim a share: and secondly that items 1 and 4 to S of plaint A schedule are Barber's service inam lands which could not be partitioned.

4. Our learned brother rejected both these defences and decreed the plaintiff's suit. It is now contended before us that those defences should be upheld.

5. To appreciate the said contentions, the relevant facts require to be noticed. After the death of her husband, the plaintiff set up an unregistered will as having been executed by her husband bequeathing his properties to her and authorising her to adopt to him a boy of her choice. The plaintiff presented the same for registration to the Sub Registrar, Kothapeta. The Sub registrar refused to register the will. Thereupon she preferred an appeal to the District Registrar. During the pendency of that appeal, some mediators brought about an agreement between the parties whereunder she gave up her case that her husband died divided and testate and agreed to receive from out of the family income 12 bags of paddy and Rs. 65 per year for her maintenance and reside in a part of the family house. Consequent on filing this agreement, the appeal was dismissed as withdrawn. The compromise memo filed before the District Registrar is relied on as a family settlement by which it is contended that the widow had elected her remedy to receive maintenance and thereby given up her claim to a share in the family properties.

6. Our learned brother rejected the said document as inadmissible being unregistered document. In this view the oral evidence adduced in this behalf was untrustworthy. The pertinent observations of our learned brother are these:

"If the compromise petition evidences her relinquishment that being a document affecting Immovable property, under the provisions of Section 17 of the Registration Act, ought to have been registered and being unregistered it is inadmissible in evidence to prove any agreement affecting immovable property. Besides, the evidence of D. Ws. 1 and 2, apart from being replete with glaring discrepancies, does not appeal to reason. The lower Court was right when it said that D. Ws. 1 and 2 cannot be believed at all. In such state of evidence, it cannot be said that the widow had renounced her right of partition. Her acceptance of maintenance, as already observed, would not per se deprive her right to claim partition, which if a standing right and enures for her benefit during her life-time."

7. It is manifest therefore that the document would be inadmissible if it operates as a relinquishment of the widow's right to a share in the family properties. Obviously to get over this difficulty the learned counsel would have us read the document as a mere narration of the terms; of an oral family arrangement between the parties earlier and that the document by itself does not purport to declare, create, or assign any right, title or interest in immovable property (vide ground No, 10 in the memorandum of appeal). We do not consider that the document could be construed in the manner contended for by the learned counsel. We do not think that there is any credible evidence of a prior oral family arrangement as such so as to construe the document as only referring to merely a past event. This argument is also not consistent with what was alleged in para 6 of the written statement which we may usefully note here:

"The Sub Registrar infused the registration holding that the will set up was not genuine. The plaintiffs preferred A. S. 14 of 1948 to the Court of the District Registrar, Kakinada. The plaintiff and the 1st defendant compromised the whole matter. There was a family settlement of disputed claims. The compromise was filed into the District Registrar's Court and recorded. Statements of the plaintiff and the 1st defendant were recorded by the District Registrar. Recording the compromise entered into between the plaintiff and the 1st defendant the District Registrar's Court dismissed the appeal and directed the will to be given away to the presentant (plaintiff herein). It is submitted that the said compromise dated 4-11-1948 filed into and recorded by the Court of the District Registrar, Kakinada, in A. S. 14 of 1948 on his file constitute a family settlement of disputed claims. It is an irrevocable and final compromise between the parties. It is acted upon and the plaintiff was receiving maintenance as per the terms of the aforesaid settlement and compromise. The plaintiff is not entitled to go back upon the settlement. She is estopped from questioning the same and she is not entitled to give a go by to it. She is bound for ever by the terms of the compromise or settlement referred to above."

8. We have therefore no doubt that the defendants-appellants relied on the document in question as by itself operating as a relinquishment deed. If so, on the appellants' pleas, the document would be inadmissible in evidence as expressed by our learned brother,

9. The document in question has been presented before us to be read as additional evidence. We thought it fit to peruse it for what it is worth so as to clarify this aspect of the matter. It is marked as Ex. X. We may set out the contents thereof for easy reference:

"Compromise brought about by the mediators who are interested in the welfare of both the parties, after reconciliation between both the parties.

1. Both the parties shall treat the decision given by the Sub Registrar regarding will, as Final decision between them and the appellant shall never raise any disputes in any manner in any court with regard to the same. The appellant shall withdraw this appeal,

2. As the petitioner is the wife of the appellant's undivided brother. Kantheti Satyanarayana, and as he is liable for providing maintenance to the petitioner according to the joint family property, the mediators have effected settlement as follows:

The respondent shall, by 30th January, of each year deliver to her 12 (twelve) kata bags of the paddy, each kata bag weighing 168 pounds excluding the gunny bag and the respondent shall pay to the appellant a sum of Rs. 65 by 30th January, 1949. The present price of "Krishna Katukulu" is Rs. 13-10-0 per bag. In future, that is by 30th January, 1949, if the price (of paddy) increases or decreases, the said sum of Rs. 65 may be reduced or increased proportionately and the sum so calculated shall be paid to appellant by the respondent. In case

the said sum is not paid in the said manner, the said sum shall be paid together with interest thereon at the rate of Rs. 5-8-0 per cent per annum, from the stipulated date till the date of payment. In case the said paddy is not delivered by the stipulated date in the aforesaid manner the price of paddy so kept in arrears shall be calculated at the rate prevailing on the said stipulated date and the said sum (so calculated) shall be paid together with interest thereon at the rate of Rs. 5-8-0 per cent per annum. The zamindary jyoti dry wet land of the extent of ac. 1-49 cents bearing survey No. 227/2 and the dry land of the extent of ac. 0-53 cents bearing survey No. 173/4, in all land of the extent of ac. 2-02 cents relating to Gopalapuram village within the registration sub-district of Kothapeta shall be kept as security for the said sum of maintenance and interest payable in the said manner and the appellant shall be entitled to recover her maintenance by putting to auction the said property so kept as security. The respondent shall, without any reference to the appellant, discharge the entire debts relating to the family, In case the respondent sustains loss from the service inam land of about ac. 5-00 cents due to acts of God or State the respondent need not pay the aforesaid cash maintenance to the appellant from that time onwards. "For her residence throughout her lifetime, the appellant shall be given the eastern half share of the house belonging to family in the aforesaid Gopalapuram village, without any right to alienate the same by sale, mortgage etc., and without any right whatsoever to rent it out to any others in any manner but she shall have right only to reside in the said portion (of the house) throughout her lifetime." The respondent shall, within a week, execute a maintenance deed as per the aforesaid terms on a sufficiently stamped paper with his own expenses, and deliver the said deed, to the appellant after getting the same registered. As it is settled in the aforesaid manner both the parties consented to the aforesaid terms and both of them accepted the previous decision of the Sub Registrar as final decision (between them). Therefore, this appeal has been withdrawn by the appellant.

Be pleased to consider. 4-II-1948. Sd) (in telugu) Kantheti Satyavati, Appellant.
Sd) (in telugu) Kantheti Narasanna, Respondent.

Mediators:

* * * * *

10. There can be no doubt or dubiousness that the document as such operates to create a right in Immovable properties (vide the under lined (here into " ") passage) and it is not suggested that the value thereof is less than Rs. 100. It is equally manifest that there is not a whisper of her having relinquished her right to claim any share in the family properties. It is clear to us that the compromise was effected whereby the widow had given up her case that her husband had left her properties under the will that she set up and nothing more. The parties agreed that maintenance as expressed was payable to her.

11. Sri Suryanarayana Murthy argued that even so the widow must be deemed

to have elected to receive maintenance instead of a share. We do not see anything in this document which supports the plea of election. The very foundation of the rule of election is that a person taking the benefit of an instrument must also bear the burden and that he or she cannot take under and against the same instrument. It is therefore a branch of the general rule that no one may approbate and reprobate. We are unable to see that there is any foundation for invoking the doctrine of election here.

12. The learned counsel has placed reliance on *Gajavalli Ammal and Another Vs. Narayanaswami Mudaliar*, . The case is clearly distinguishable on facts. That was a case of widow taking properties under a registered settlement deed. It would suffice to record here the observations of the learned Judges to bring out the utter inapplicability of that decision to the facts of the present case. After referring to the settlement deed and a letter by which the widow gave up her other rights, they observed thus at p. 189:

"It specifically recites also Unit in view of these facts the widow was giving up her claim as set forth in the lawyer's notice dated 21-12-1958. These circumstances together with the evidence which is available in the case amply justify the view taken by the learned Judge in the court below that by the arrangement embodied in the settlement deed and by the acceptance of the properties given under the settlement deed the widow had given up her right to claim a half share in (the joint family properties under the Act of 1937. We accept this finding as correct."

13. Sri suryanarayanamurthy argued that as the widow had accepted maintenance as provided for under the said document, that was sufficient to infer that she had given up her right of claiming a share in the joint family properties. We do not think that we can accede to the contention that by accepting maintenance she must be deemed to have given up her right to claim a share in the properties.

14. It has been laid down in *Rathnasabapathi Pillai v. Sarasvathi Ammal*, (1953) 2 Mad LJ 459: (AIR 1951 Mad 307) that the widow's right to maintenance under the general Hindu Law was not taken away by (the Hindu Women's Rights to Property Act, 1937 (No. XVIII of 1937) and that the option would rest with her to claim maintenance, or a share, but not both.

15. The said view has been adopted by this Court in *Jetti Varahamma Vs. Jetti Ammathalli Naidu (died) and Others*,). It was expressed in that decision at p. 392 (of Andh WR): (at p. 592 of AIR) thus:

"But it is obvious that as the Act confers upon the widow rights of succession in respect of the, husband's property the right of maintenance allowed to her under the ordinary Hindu Law would no longer be available. Obviously this means that the widow cannot exercise both the rights at one and the same time and if she desires to take a share in the husband's property she could not claim maintenance."

16. We therefore agree with the findings of the learned Judge that the widow had not given up her right to a share in the family proper lies and that the suit is not defeated because she was receiving some maintenance.

17. The next point urged by Sri Surayanarayana Murthy is that the learned Judge erred in decreeing partition of the Barber's Service inam lands, viz., items 1 and 4 (to 8) of the plaint A schedule. It is his contention that they are not joint family properties and that they cannot be partitioned. He relies on (Nagadevam) Venkatasubbamma Vs. Nagadeva Venkateswaralu and Another, . That was a case of a suit for maintenance by Hindu widow whose husband died as an undivided member of the family. The family possessed some properties in addition to certain purohit service inam lands in Anaparti village. The learned Judge held that the income from those purohit service inam lands could not be taken into account in fixing rate of maintenance.

18. A Division Bench of this Court went into the question of partition of lands which formed the emoluments for rendering blacksmith service in Kakileti Macharacharyulu v. Kakileti Veeracharyulu, (1958) 2 Andh WR 608. In that case the plaintiffs and the defendants were jointly entitled to the office of the village blacksmith, and the lands described in B schedule formed the emoluments of the blacksmith service. It was held that the plaintiffs were entitled to maintain the suit for partition of the lands which were service inam lands. They also took the view that a suit by one of the joint office-holders (a co-owner) to partition the emoluments and recover possession of his share was not barred u/s 21 of the Madras Hereditary Village Offices Ad, 1595 (III of 1895). In the Madras case decided earlier, (Nagadevam) Venkatasubbamma Vs. Nagadeva Venkateswaralu and Another, it was recognised that a number of joint holders of office could render service and share the emoluments.

19. We would therefore make it clear as suggested by the learned Advocate-General appearing for the respondent that the plaintiff would be entitled to enjoy her share of the lands, items 1 and 4 to 8 of the plaint A schedule, that is to say, Barber's service inam lands, subject to her getting the services performed, the failure to perform those services entailing her losing the share in the said lands, in the manner provided under B. S. O. No. 55.

20. The decision on this point only needs this clarification.

21. We find no ground for interference with the decision of our learned brother.

22. The appeal is dismissed with costs.