
(2013) 12 AP CK 0089

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 181 of 1999

Kari Hari Babu

APPELLANT

Vs

Maddineni Narasimham

RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Citation : (2014) 5 ALD 356

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This Letters Patent Appeal is filed against the judgment, dated 15.04.1998, rendered by a learned Single Judge of this Court in A.S. No. 817 of 1981. The said appeal arose out of the judgment and decree, dated 11.07.1980, in O.S. No. 176 of 1970 on the file of the Court of Subordinate Judge, Chirala. For the sake of convenience, the parties are referred to, as arrayed in the suit.

2. The suit was filed by the sole plaintiff, the appellant herein, for the relief of partition and separate possession of the suit schedule properties and for mesne profits, in respect of plaint "A" and "B" schedule properties. The case of the plaintiff was that his father late Karri Venkatrayudu had six sons by name, Veerayya, Ayyanna, Subbayya, Narayana, Rangaya and Krishnamurthy (1st defendant) and out of them, himself and Krishna Murthy alone are surviving, by the time, the suit was filed. Subbayya's wife, Smt. Ananthamma, inherited or acquired vast extent of property and she died on 25.07.1970.

3. According to the plaintiff, himself, his brother, the 1st defendant, and the legal heirs of his other brothers are entitled to succeed to the estate of Ananthamma. He pleaded that taking advantage of the deteriorated health condition of Ananthamma, the 2nd defendant, by name, Maddineni Narasimham, his wife, Thulasamma, the 3rd defendant, and certain influential persons in the village, holding the post of Karanam, etc., have brought into existence certain fictitious documents, such as, Wills and deeds of settlement. The plaintiff furnished a detailed account of the various deeds and documents and pleaded that all of

them are fictitious and fabricated. He prayed for a decree, for partition of the properties among the legal heirs of late Ananthamma.

4. The principal opposition to the suit was by the 2nd defendant. He pleaded that himself and his wife, the 3rd defendant, were assisting Ananthamma for quite a long time. He stated that out of her own will and free mind, Ananthamma executed Wills, General Power of Attorney and deeds of settlement in favour of various persons, and that the suit was filed only to knock away the properties left by Ananthamma. He denied the allegation as to manipulation or fabrication of the documents.

5. Apart from opposing the suit, the 2nd defendant has also pleaded that the Village Munsiff by name, K. Pundarikakshayya and Assistant Karanam, Gangavarapu Krishnamurthy have misled and cheated him in bringing about certain documents. He further pleaded that Ananthamma executed her last Will on 04.07.1970, and in some of the documents, provision was made to various individuals, including the parties to the suit, and certain agencies. He prayed for dismissal of the suit. Additional written statement was also filed by him, by raising certain other contentions.

6. The 4th defendant, who is the son of one of the brothers of the plaintiff, in a way, supported the case of the plaintiff. While the 3rd defendant adopted the written statement filed by the 2nd defendant, the 5th defendant, the wife of another brother of the plaintiff, adopted the written statement of the 4th defendant.

7. The trial Court dismissed the suit, holding that the various documents said to have been executed by Ananthamma or her G.P.A., the 2nd defendant, are genuine. The appeal preferred by the plaintiff was dismissed.

8. Sri M.V. Durga Prasad, learned counsel for the plaintiff submits that even if one goes by the contents of the written statement filed by the 2nd defendant, the principal opponent, it becomes clear that fraud of highest order was played, to knock away the valuable properties of Ananthamma. He submits that Ex. B.5, the Will said to have been executed by Ananthamma on 09.05.1970 is full of contradictions, and it does not even command the basic acceptability. He submits that a perusal of Ex. B.6, the G.P.A., dated 20.05.1970, said to have been executed by Ananthamma would manifest the level of fraud, even to an onlooker. Learned counsel submits that the trial Court as well as the lower Appellate Court recorded findings to the effect that Ananthamma was an educated woman, well-versed in writing and reading; and still, the Will and various documents said to have been executed by putting thumb impression were found to be genuine.

9. Sri Durga Prasad further submits that the 2nd defendant was used as a tool, by certain sections in the village, for fabrication of the documents and though the 2nd defendant played active role in this regard, he too realized that he became victim of fraud in the hands of those very persons; and that the 2nd defendant has narrated this, graphically, in his written statement. He submits that though

the office of Sub-Registrar was almost in a walkable distance from the residence of Ananthamma, the so-called documents were presented by her alleged G.P.A., the 2nd defendant, for registration.

10. This LPA was listed on several occasions with a view to give opportunities to the defendants. No arguments were advanced on their behalf and one excuse or the other were cited. Since the LPA is of the year 1999 and one of the oldest matters, this Court is left with no alternative, except to proceed on the basis of the material on record.

11. The dispute in relation to the suit schedule properties is between the legal heirs of late Ananthamma on one hand, and the persons claiming to be proximate to her, on the other hand. Taking into account the pleadings before it, the trial Court framed the following issues for consideration.

ISSUES,

- 1) Whether the plaintiff and the 1st defendant are nearest reversioners to the estate of Kari Ananthamma in respect of all suit properties?
- 2) Whether the plaint schedule is correct?
- 3) Whether Kari Ananthamma died possessed of suit properties?
- 4) Whether the Will dated 09.05.1970 is true, valid and binding?
- 5) Whether the gift deed dated 23.05.1970 is true, valid and binding?
- 6) Whether the gift deed dated 27.05.1970 in favour of Kari Ramanamma and her son, Narasimhaswamy in favour of the 1st defendant are true, valid and binding?
- 7) Whether the Will dated 04.07.1970 is true, valid and binding?
- 8) Whether the plaintiff and the 1st defendant are estopped from contending that Wills dated 09.05.1970 and 04.07.1970 are not true, valid and binding on them?
- 9) Whether the suit is not maintainable for reasons stated in para 24 of the 2nd defendant's written statement?
- 10) Whether the plaintiff is entitled to joint possession of the suit properties along with the 1st defendant?
- 11) Whether the defendants 2 and 3 are entitled to compensatory costs?
- 12) To what relief?

ADDITIONAL ISSUES:

- 1) Which of the genealogical tables, whether the one filed by the plaintiff or the one relied on by the 2nd defendant, is true?
- 2) Whether the gift deed dated 23.05.1970 is true, valid and binding?

- 3) Whether the plaintiff was adopted by Rattayya?
- 4) Whether late Ananthamma had title to and possession of item 4 of plaintiff schedule?
- 5) Whether the same item formed part of the estate of Ananthamma by the date of her death?
- 6) Whether the Will alleged to be executed by late 1st plaintiff in favour of the 2nd plaintiff is true, valid and binding on the defendants? and whether the 2nd plaintiff is the legal representative of the 1st plaintiff?

12. Obviously, because the property involved is vast and the contest was serious, while six witnesses were examined on behalf of the plaintiff, as many as 20 witnesses were examined on behalf of the defendants. On behalf of the plaintiff, Exs. A.1 to A.5 were filed and Exs. B.1 to B.49 were filed by the defendants. Exs. X.1 to X.14 were also taken on record. The suit was dismissed and in A.S. No. 817 of 1981 filed before this Court, the following points were framed:

- 1) Whether the suit was not maintainable?
- 2) Whether the Will Ex. A.2 alleged to have been executed by the 1st plaintiff in favour of the 2nd plaintiff is not true?
- 3) Whether Kari Ananthamma was in a sound and disposing state of mind to execute the documents purported to have been executed by her disposing of the suit properties?
- 4) Whether Kari Ananthamma was so illiterate to have affixed thumb impressions on the documents purported to have been executed by her?
- 5) Whether the Wills Exs. B.5 and B.10 and General Power of Attorney Ex. B. 6 and Gift Deeds Exs. B.31, 41 and 42, purported to have been executed by Kari Ananthamma, are true and valid?

13. Point No. 1 was answered in favour of the plaintiff. Point No. 2 was in relation to the arrangement among the plaintiffs themselves and it was held that Ex. A.2 the Will executed by the 1st plaintiff in favour of the 2nd plaintiff was held to be true and valid. Points 3 and 4 were answered against the plaintiffs. The discussion spread over substantial portion of the judgment of the learned Single Judge, running into 30 closely typed pages, was devoted to point No. 5. The point was answered in the affirmative and against the plaintiff.

14. The arguments before us are concentrated mostly on points 3 to 5 framed by the learned Single Judge, and we, accordingly, deal with the same. Large number of documents dealing with the entire property of Ananthamma were pressed into service. While some of them are in the form of Wills, others are in the form of deeds of settlement, sale deeds and G.P.As. The 4th point framed in A.S. No. 817 of 1981 i.e., whether Karri Ananthamma was so illiterate as to affix thumb impressions on the documents purported to have been executed by her, covers

issues 4 to 7 framed in the suit. An answer for this issue would in a way solve the controversy to a larger extent. Hence, it is taken up first.

15. All the documents said to have been executed by Ananthamma contained thumb impressions and not signatures. The plaintiff asserted that Ananthamma was well educated and she was well-versed in reading and writing and that the question of her executing any document by putting her thumb impression does not arise. In his written statement, the principal contestant i.e., the 2nd defendant stated that Ananthamma was an illiterate. The relevant sentence reads,

The 2nd defendant herein and Karri Ananthamma are illiterates. They are not well versed with worldly affairs.

16. He stated this while mentioning that one G. Krishna Murthy, Assistant Karanam of the village and Pundarikakshayya, Munsiff of the village, have committed fraud upon himself and Ananthamma. D.Ws. 2, 3, 8, 10, 11 and 15 are the attestors or the witnesses, as the case may be, of various documents said to have been executed by Ananthamma. D.W. 2 is a non-party witness. He stated that he signed as an attestor in Ex. B.5. As regards the literacy of Ananthamma, the following was elicited from this witness:

Ananthamma was a theist. I heard that she used to read puranams. I do not know whether she could read and write. I do not know whether Ananthamma became ill before her death.

17. D.W. 3 is said to have attested Ex. B.6. The 2nd defendant is said to have executed a deed of relinquishment in favour of Ananthamma through Ex. B.7 and he is said to have attested that also. The 2nd defendant was very much aware of the purport of the cross examination of D.W. 2 about the literacy of Ananthamma. Nothing was spoken to by D.W. 3 about her literacy in the chief examination. In the cross examination, the following was elicited.

I do not remember the contents of Ex. B.6. The village karanam obtained the thumb mark of Ananthamma in Ex. B.6. Ananthamma was able to read Bhagavatam or Bharatam. She was able to write but four or five years prior to Ex. B. 6 she got shacking of the hands due to old age. I cannot say why one thumb mark was struck off in Ex. B.6.

18. D.W. 8 is said to be the attestor of a Will marked as Ex. B.10. He is said to have gone to the panchayat office on being invited by the 2nd defendant and from there himself and number of other persons went to the house of Ananthamma. This witness stated that he does not know whether Ananthamma was able to write at all. He stated that the scribe of the document had obtained the thumb mark of Ananthamma on the Will and that he did not observe whether there are any strikings or erasions in the Will.

19. The actual contestant of the suit i.e., the 2nd defendant deposed as D.W. 12 and was cross-examined about this aspect. He stated:

Ananthamma used to read some books. I do not know that she used to read Bharatam and Ramayanam. She used to read sumati satakams. She was religious minded. She never used to write. It is not true to suggest that she can read and write well.

20. If this part of deposition is superimposed with his plea in the written statement that Ananthamma was an illiterate, one has to invent a new definition for "literacy". It is important to note that D.W. 2 is an illiterate and according to him, a person who can read books, may not be able to write and such person deserves to be treated as illiterate. Unfortunately, the definition or connotation of the word literate, given by an illiterate found favour with the trial Court as well as the learned Single Judge. The curious part of it is that such a witness called a spiritual minded woman, who had the habit of reading puranas and other books, as illiterate.

21. The learned Single Judge has also referred to the evidence of D.W. 10. He is said to have attested Ex. B.2 as well as Ex. B.11 as an identifying witness. He stated that Ananthamma put her thumb mark on the documents in his presence. In the cross-examination he stated,

One week later, Ananthamma again called me and told me that whatever she did was not alright and that the choultry was not functioning well and the previous will executed by her was not proper and that she wanted to execute another will. She told me that the previous will was not written according to her instructions and that fraud was played on her. She said that power of attorney and gift deeds were got executed by the village karanam playing fraud on her. I think that Ananthamma was not aware of worldly affairs. Ananthamma was a God fearing woman. She was not writing but she was able to read well. She said that she would not sign and that she would affix her thumb mark as it was her practice. It is not true to say that Ananthamma was able to sign. She affixed her thumb mark not because of her age.

22. D.W. 2 is the nephew of the contesting defendant. According to him, Ananthamma executed two Wills, a settlement deed and a General Power of Attorney in favour of the 2nd defendant. He has signed as an identifying witness in Ex. B. 10. This too was with thumb impression. This witness stated in cross-examination that Ananthamma knew reading, but was not able to write. He denied the suggestion that Ananthamma can sign and write well.

23. An analysis of the evidence of the witnesses referred to above would clearly disclose that hardly there exists any consistency. One thing which emerges is that Ananthamma was well-versed in reading and writing. The reasons assigned by some of the witnesses for her alleged choosing to put the thumb mark, are too fanciful, to be accepted. While one said that she was having a shaking hand, the other said that she intends to put the thumb impression though she is well-versed in writing. Even according to the witnesses examined by the contesting defendants and in particular D.W. 10, Ananthamma told him that fraud was

played upon her by several persons in procuring the Will, deeds of settlement, power of attorney, etc.

24. To buttress their contention that Ananthamma used to put the thumb impressions alone in various documents, the 2nd defendant and his associates virtually flooded the trial Court with several documents marked in X-series being X.1 to X.14. According to him, these documents emanated from the Office of the Panchayat and Forest Range Office. D.W. 13 is a clerk in the Office of the Panchayat Samithi. He filed Exs. X. 1 and X.2 resolutions of the Inkollu Panchayat Samithi, in which, Ananthamma is said to have put her thumb impression. His cross-examination reads,

Ananthamma did not put her thumb impression in Ex. X. 1 in my presence. I cannot say under what circumstances, she affixed the thumb impression. I cannot also say whether it is her thumb impression. Personal registers are maintained. I have not been summoned to produce the personal register with reference to Ex. X. 1.

25. Similarly, D.W. 14 filed Exs. X.5 to X.12, which are said to be in relation to the growing of tobacco. His cross examination reads,

I have been working at Inkollu since 4 years. Karri Ananthamma did not put thumb impressions in my presence. Under Rule 15 of Central Excise Act, the grower has to give a declaration in the Office. It is not true that the signatures and thumb impressions will be obtained at the houses of the growers.

26. D.W. 15 was examined by the 2nd defendant. He is said to be an attesor of Ex. B.31 and stated that Ananthamma has put her thumb impression on the document in his presence. He is the immediate neighbour of Ananthamma. His cross-examination reads,

I knew Ananthamma very well. Her house is in front of my house. She used to read puranas. She can also write and sign. I brought some books and puranas, singed by her. I do not know that Ananthamma was not of sound mind since about 2 years prior to the death and she was also taking treatment. I do not remember who called me as an attesor to the gift deed. I remember to have attested the gift deed at her house. By then she was confined to bed. At the time of executing the gift deed, Ex. B.31, she was in a conscious and sound state of mind. A few days later, she was not of sound state of mind. It is not true that Ananthamma is not in a sound state of mind at the time of executing the gift deed and it was obtained by fraud.

27. Alleging that some statements elicited from this witness have the effect of shacking his trustworthiness, the 2nd defendant sought permission of the Court to treat the witness as hostile. The permission however was refused. Therefore, the evidence has to be taken on its face value. The learned Single Judge, however, has this to say about D.W. 15,

D. W. 15 attested Ex. B.31, however stated that she signed on some books, but

his evidence was already considered earlier and held to be tainted testimony. Hence, I am not prepared to place on record his evidence on this aspect.

28. We do not at all approve the view expressed by the learned Single Judge. Treating a witness in a civil suit, as hostile, is a rare phenomenon. Very strong case, has to be made out for that purpose. Once the trial Court refused to treat a witness as hostile and the order in that behalf has become final, the evidence of such witness cannot at all be discarded, simply because it falsifies the version of the party, who examined him. Further, one does not have to depend upon the evidence of the 15th defendant alone. Almost, every witness has spoken in a wavering manner about the alleged putting of thumb impression by Ananthamma.

29. D.W. 19 is an identifying witness in Ex. B.42. This witness has also figured as an attester of Ex. B.6. He stated that Ananthamma was in a conscious state when she has put her thumb impression upon that. However, he stated that the Sub-Registrar came to her house and when the Sub-Registrar called her, she did not respond and therefore, he felt that she is unconscious. According to him, Ananthamma never asked him to attest any document and even at the time of execution of the power of attorney, she was unconscious.

30. It is only a person who does not know to write or read, that would choose to put the thumb impression for executing a document. There are instances where people who do not know reading and writing put their signatures in writing, just by practising to write the relevant alphabets or the signs. However, one hardly comes across the instances of a person well-versed in writing and reading, choosing to put thumb impression, that too while transferring extensive properties.

31. The level of fraud that was taking place in relation to the properties of Ananthamma can be gathered from the pleadings of the contesting party, the 2nd defendant himself. The main plank of argument of D.W. 2 was that Ananthamma executed a deed of settlement, a Will and a power of attorney in his favour. The deed of settlement will neutralise the Will to the extent of the properties covered by it. The inconsistencies are so prominent and visible that on the day on which the power of attorney is said to have been executed, Ananthamma herself is said to have executed some more documents; all with thumb impressions. In similar fashion, various other documents, through which the properties were said to have been transferred in different forms, have also come into existence. In relation to such documents and the manner in which the things are said to have taken place, the 2nd defendant stated in para 11 of his written statement as under.

One Gangavarapu Krishnamurthy is the Assistant Kamnam of the village of Inkollu. He is a document writer. He is the scribe of the will dated 9.5.70 and General Power of Attorney dated 20.5.70 executed by Karri Ananthamma. One Name Pundarikakshayya is the village Munsif of Inkollu. He is distantly related to Karri Ananthamma and was also mentioned as a legatee in the will dated 9.5.70

of the above mentioned Karri Ananthamma. He is also a stamp vendor. One Name Hanumantharao, the son of Veeraiah and Bandla Sankaranarayana adopted son of Tirupathirayudu are the attestors of the above mentioned gift deed dated 23.5.70. Thus, these two are the associates of Gangavarapu Krislmamurthy and Name Pundarikakshayya. The second defendant herein and Karri Ananthamma are illiterates. They are not well conversant with worldly affairs. The above mentioned four persons i.e., the village Munsif Assistant Karanam Bandla Sankaranarayana and Name Hanumantharao represented to the second defendant herein that they would safeguards his personal interests. Having made them believe that they got the second defendant put thumb impression on several blank stamp papers and blank papers saying that they were necessary to help the second defendant personally to surmount the difficulties that are likely to be created by importunities of Ananthamma's several relatives clamouring for gifts of her properties. The second defendant went to the Sub Registrar's office to admit the execution of the gift deed dated 23.5.70 executed by Karri Ananthamma in favour of himself and his wife. He admitted execution of the same. Later, the second defendant's thumb impressions were taken on blank stamp papers and blank papers. As rumours were afloat in the village that the second defendant as power of attorney agent had executed sale deeds in favour of the above said name Pundarikakshayya and Gangavarapu Krishna Murthy and as he did not in fact execute any such sale deeds he got notices issued by telegram and by post to the above said four persons and another in June 1970. Some of them got reply notices issued with false allegations. It is alleged that the sale deeds executed in their favour are dated 23.5.70.

32. If this is the manner in which the properties of a person who has got a battery of legal heirs, are snatched away by third parties, the Courts should be slow to extend the helping hand for such imposters or fraudsters. We, therefore, find that Ananthamma was well-versed in writing and reading and that the documents said to have been executed by her with the thumb impressions cannot be taken as true and that there is intrinsic evidence that fraud was played not only by the contesting defendants collectively against Ananthamma and her legal heirs, but also inter se themselves.

33. The next point is as to whether Karri Ananthamma was in a sound and disposing state of mind to execute the documents purported to have been executed by her for disposing off the suit properties. P.W. 1 is the daughter of one of the brothers of husband of Ananthamma. According to her, there were only two houses between her i.e., P.W. 1 and the house of Ananthamma. She stated that Ananthamma used to read Bhagavatgita daily till two years prior to her death. Ananthamma is said to have suffered a paralytic stroke and was almost unconscious for one year prior to her death. She stated that the defendants 2 and 3 joined Ananthamma as farm-servants and at one stage, they got her treated through witch doctors of Kasukund and Chilakaluripeta. In the cross-examination, she stated that Ananthamma not only used to write but also

maintain her own accounts. Nothing was elicited from this witness to doubt her truthfulness.

34. P.W. 2 is said to be a resident in Ananthamma's house. He stated that Ananthamma was a religious minded person, but she became seriously ill one year prior to her death. The defendants 2 and 3 were not able to elicit anything objectionable from this witness.

35. The 2nd plaintiff deposed as P.W. 4. He gave a detailed account of the case as presented in the plaint. He stated that his father executed a Will Ex. A.2 in his favour. P.W. 5 is another witness in relation to Ex. A.2.

36. The 2nd defendant deposed as D.W. 12 and his wife Tulasamma did not enter the witness box. Therefore, it is important to take note of the evidence of D.W. 12. His chief-examination was extensive, covering various documents and his alleged relationship with the family of Ananthamma. To a suggestion that he came as a farm-servant of Ananthamma, he stated that he stayed in her house, but the other brothers were given grain and money by Ananthamma to sustain themselves. In other words, while his three brothers are said to be farm-servants of Ananthamma, he is said to be an inmate of the house.

37. It is important to note that according to D.W. 12 and other witnesses examined by him, Ananthamma was in a sound and healthy condition and to administer her vast property, she has chosen the 2nd defendant, an illiterate, to execute every sort of document ranging from gift deeds to deeds of settlement in favour of his wife and various persons. The curious, if not ridiculous part of it is that a person, in whose favour a gift deed, a will deed and GPA were executed, has executed a relinquishment deed in favour of that very transferor. We cannot come across a better instance of day light fraud committed by vested interest in relation to the property of a deceased woman than this.

38. Whether one takes into account the fact that dozens of documents came into existence with thumb impression, even while the alleged executant thereof was highly educated woman, or the proof of not only suspicion, but also fraud circumstances that shrouded each and every document, the inescapable conclusion is that such documents are inoperative and unbelievable. The alleged Wills can straight away be disbelieved not only for want of acceptable proof but also on account of serious suspicious circumstances. The documents which are deeds of settlement or gifts or sale deeds can be straight away ignored as having been tainted with fraud.

39. Hence, the Letters Patent Appeal is allowed and the decrees passed by the trial Court as affirmed by this Court are set aside. The suit shall stand decreed and a preliminary decree, as prayed for, shall ensue. There shall be no order as to costs.

40. The Miscellaneous Petitions, if any, pending in the appeal shall stand disposed of.