
(2006) 01 AP CK 0021
In the Andhra Pradesh High Court
Case No : C.R.P. No. 6902 of 2005

Lingu Savithri

APPELLANT

Vs

P. Sahadev

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Evidence Act, 1872 — Section 101, 102, 103, 4

Citation : AIR 2006 AP 182 : (2006) 5 ALD 4 : (2006) 2 ALT 1

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Bal Raj Bhodankar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The Petitioner filed O.S.No.20 of 2000 in the Court of the learned Senior Civil judge, at Bodhan, against the respondent, for the relief of partition and separate possession of the suit schedule properties. She pleaded that she is the daughter of the respondent. In his written-statement, the respondent disputed the very relationship, apart from denying the other allegations, made by the petitioner. The trial Court framed an independent issue, touching upon the relationship. The petitioner filed I.A.No.233 of 2005 for reframing of the said issue. The application was resisted by the respondent. Through order dt.5-10-2005, the learned Senior Civil Judge dismissed the application. Hence, this revision

2. Sri Balraj Bodhankar, learned Counsel for the petitioner submits that the issue, which was framed by the trial Court, is in such a form, that it would require the petitioner herein to prove the negative. He contends that since the denial, which gave rise to the framing of the issue, came from the respondent, it needs to be reframed, in a manner, that would place the burden upon the respondent.

3. The very basis for the petitioner, to file the suit for partition was her alleged kinship viz., she is the daughter of the respondent. The latter denied such

relationship. He pleaded that he was no doubt married to Gangamma, the mother of the petitioner, but there were no issues, out of their wedlock. He stated that within one year from the marriage, he divorced her, and the petitioner was born to the said Gangamma after such a divorce. He further pleaded that the said Gangamma got remarried to one person, by name Peeraji, and that the petitioner is the child of that couple. It was in this context, that trial Court framed an issue, which reads as under:

Whether the plaintiff is daughter of the defendant born through Gangamma.

4. The petitioner filed the present I.A., with a prayer to reframe the issue in the following manner:

Whether the plaintiff is not the daughter of the defendant, born to Gangamma through Peeraji.

5. Before any further discussion is undertaken, as to the permissibility or legality of the prayer of the petitioner, it needs to be noticed that the form in which the petitioner seeks amendment of the issue, is rather meaningless and self-contradictory. A bare perusal of the proposed issue discloses that on the one hand, the petitioner claims to be the daughter of the respondent (defendant), and on the other hand, the issue suggests that she is born to Gangamma through Peeraji. Either the petitioner did not instruct her advocate properly or the latter was in an utter state of confusion, in framing the proposed issue. The petitioner could not have been the daughter of the respondent, and another person by name, Peeraji at one and the same time.

6. However, let us proceed on the assumption that the petitioner asserted that she is the daughter of the respondent herein through Gangamma, and that she wanted the respondent, to disprove that assertion.

7. On an earlier occasion I.A.No.320 of 2003 was filed by one of the parties, and through an order in the said I A. D.N.A. test of the samples drawn from the petitioner, on the hand, and her mother Gangamma, and Peeraji, on the other hand, was directed to be held. It is said that the test established that the respondent is not the father of the petitioner. The order was subject-matter of C.R.P.No.766 of 2004. For the purpose of this C.R.P., it is not necessary to refer to the said question, in detail.

8. Order XIV of C.P.C. is clear in its purport, as to the manner in which issues are to be framed. Similarly, Chapter VII of the Indian Evidence Act, 1872 (for short the Act) stipulates, in clear terms, as regards the existence of burden, on the parties, to prove the concerned issues. The need to frame an issue would arise, only when the assertion, made by one party, is denied by the other. If an assertion made by a plaintiff is not denied by the defendant, such assertion can be taken to have been accepted by the latter and the necessity for the court, to frame an issue upon the same does not arise. Instances are not lacking where any independent assertions made by defendant in a written statement, are

contradicted by a plaintiff, by filing rejoinder or through other modes of pleadings. Either way, an issue comes to be framed, on the basis of the assertion made by one party, and the denial by the other.

9. Though it is not difficult to identify the area of controversy, in the light of assertion and denial, by the parties, the language to be employed in framing the issue is fraught, with its own difficulty. The text in which an issue is framed, would be decisive, in the matter of placing the burden on either party, to prove it. Here again, the concepts of burden and onus, to prove, assume significance, while the former is constant for the most part of it, the latter keeps on shifting.

10. Sections 101 - 103 of the Act, incorporate very important principles of evidence, in the context of burden of proof. They read as under:

Section 101. Burden of proof. - Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it said that the burden of proof lies on that person.

Section 102. On whom burden of proof lies.- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 103. Burden of proof as to particular fact.- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

11. u/s 101, the burden is placed upon the person, who wants his right or liability to be declared by the Court. Section 102 is somewhat holistic, in its approach. According to this, the burden is on the person, who would fail, if no evidence is adduced. The next provision i.e., Section 103 is a little specific, in so far as it mandates that it is for the person who wishes the Court to believe, in existence of a particular fact; that has to prove it.

12. If the present case is examined on the touchstone of the principles contained in the above provisions, it becomes evident that the burden squarely falls upon the petitioner to prove the factum, of her alleged relationship with the respondent, as daughter. Being a plaintiff, who claimed the relief of partition, being a party, who asserted a particular relationship, and being the party, who would lose, if no evidence is adduced; it is the petitioner that has to discharge the burden. The issue which was framed by the trial Court is couched in such a manner, as would place the burden on the petitioner. If the request of the petitioner to reframe the issue, is acceded to, the burden would shift to the respondent. Further it would require the respondent to disprove an allegation made against him. Such a course would run contrary to the purport of Sections 101 - 103 of the Act. At any rate, the assertion made by the petitioner is not

such a presumption, as provided for u/s 4 of the Act, which in turn would place the burden on the respondent, to disprove it.

13. The trial Court had appreciated the matter from the proper perspective and rightly dismissed the I.A. This Court does not find any basis to interfere with the same. Accordingly, the C.R.P. is dismissed. There shall be no order as to costs.