
(1995) 08 AP CK 0020

In the Andhra Pradesh High Court

Case No : Second Appeal No. 355 of 1993

Loya Nagapatharaju and Others

APPELLANT

Vs

Loya Gangamma

RESPONDENT

Date of Decision : 24-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31

Citation : (1995) 3 ALT 873

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : T. Veerabhadrayya, T.S. Anand and Y. Sreenivasa Murthy, for the Appellant; B. Hanumantha Rao, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—This second appeal is from the Judgment and decree of the 1st Additional District Judge, Krishna at Machilipatnam in A.S. No. 16 of 1987, dated 17-6-1993 setting aside the Judgment and Decree in O.S. No. 143 of 1981 on the file of the District Munsif, Kaikalur, dated: 1-10-1986.

2. The appellants are the plaintiffs in the suit. For the sake of convenience the parties herein are referred to as they are arrayed in the suit.

3. The plaintiffs filed the suit, O.S. No. 143 of 1981 on the file of the District Munsif, Kaikalur, for permanent injunction restraining the defendant and her men from interfering with their possession and enjoyment over the suit schedule property and for costs. As per the averments in the suit, the plaintiffs are brothers and the defendant is their senior paternal aunt. Plaintiffs being minors are represented by their father, Loya Koteswar Rao. Loya Raghavulu, Loya Koteswar Rao and Loya Seetharamaiah are brothers. The defendant is the second wife of Raghavulu. Loya Raghavulu and Loya Sitaramaiah have no issue, while Koteswara Rao has three sons, who are the plaintiffs. Loya Raghavulu owns certain movable and immovable properties. He was suffering from Cancer for

considerable time. He died on 9-10-1980. He executed a Will dated: 10-8-1980 bequeathing one acre of land covered by Sy. No. 620 situated at Bhaskararaopet in favour of plaintiffs No. 1 and 2; 56 cents of land in Sy. No. 620/4 in favour of the 3rd plaintiff with absolute rights. He further bequeathed Ac. 1.45 cents of land in R.S. No. 621/2, 5 cents of house-site and certain movables in favour of the defendant with life interest with vested remainder equally with plaintiffs. After the death of Raghavulu, the plaintiffs came into possession of the land and have been enjoying the same as per the Will deed. However, the defendant started interfering with their possession. After exchange of notices, the suit was laid by the plaintiffs.

4. The defendant denied the execution of Will deed dated 10-8-1980. Her husband never informed her of such a Will during his life time; that she is in possession of entire lands; that she is cultivating the said land and paying the land revenue, etc. The boundaries of land bequeathed are not correct. On 9-10-1980 her husband executed a Will in her favour bequeathing all the lands. Even otherwise she being the sole surviving legal heir, is entitled to inherit the entire property under Hindu Succession Act. The Plaintiffs were never in possession of the suit schedule property either before or at the time of filing of the suit and hence the suit for mere injunction is not maintainable.

5. The trial Court, on the basis of the pleadings, framed the following issues:

(i) Whether the Will set up by the plaintiffs is true and valid, acted upon and binding on defendant ?

(ii) Whether the plaintiffs are in possession of the plaint schedule properties at the time of filing of the suit?

(iii) Whether the Will set up by the defendant is true, valid and binding on plaintiffs?

(iv) Whether the plaintiffs are entitled for the permanent injunction as prayed for ?

(v) To what relief ?

6. Six witnesses were examined on behalf of plaintiffs and documents Exs. A-1 to A-11 were marked. On behalf of the defendant eight witnesses were examined and got marked Exs B-I to B-11. The trial Court on consideration of evidence and documents passed Judgment and decree dated 1-10-1986.

7. Aggrieved by the Judgment and Decree of the trial Court, the defendant filed appeal - A.S. No. 16 of 1987 on the file of the First Additional District Judge, Machilipatnam. The lower appellate Court allowed the appeal by its Judgment and decree dated: 17-6-1993 by setting aside the Judgment and decree of the lower Court. As against the said Judgment dated: 17-6-1993, the plaintiffs filed the present second appeal to this Court u/s 100 of the Code of Civil Procedure.

8. Sri T. Veerabhadraiah, learned counsel for the appellants - plaintiffs assails the

appellate order on several grounds. He urges that the lower appellate Court did not discuss the material available on record and proceeded with the matter with preconceived notions. He neither recorded the findings as required by law, nor did he follow the procedure laid down under Order 41 Rule 31 of the Code of Civil Procedure. He further contends that the findings of the appellate Court are perverse and non-compliance of Order 41 Rule 31 vitiates the order.

9. Sri B. Hanumantha Rao - for respondent submits that the lower appellate Court is justified in setting aside the Judgment and decree of the lower Court. He further contends that the suit for mere injunction, when the title of the plaintiffs is disputed, is not maintainable.

10. The trial Court considered the genuineness of the Will - Ex A-1 dated 10-8-1980. After elaborate discussion and taking into consideration that it was arrested (sic. attested) by an independent Government Medical Officer, found that the Will executed by late Raghavulu dated: 10-8-1980 was genuine. The trial Court could not find any unnatural, mala fide or unbelievable circumstances warranting exposure that the Will was clouded with suspicion. The trial Court also found that the Will - Ex B-I set up by the defendant is not true and valid and not binding on the plaintiffs. There is also clear finding of the Court that the plaintiffs are in possession of the suit schedule property on the date of the suit.

11. Sri Veerabhadrayya, took me through the Judgment of the lower appellate Court and submitted that the Court did not even refer to the facts correctly and, therefore, there is total lack of application of mind by the lower appellate Court. The very point for consideration was not properly framed. The very first sentence in Para -5 of the lower appellate Court's judgment that "the plaintiff has obtained a decree for the suit schedule property claiming it under a sale-deed" indicates that he did not have the correct factual position before him while considering the appeal and, therefore, the learned counsel says that proper and requisite attention was not bestowed on the case by the lower appellate Court. The learned counsel submits that the language used by the appellate Court and sentences framed by him are quite unintelligible and would not convey any meaning.

12. I have gone through the Judgment of the appellate Court and find that the learned Judge did not discuss the validity or otherwise of the findings of the lower Court with reference to each issue and the relevant evidence, both oral and documentary, adduced thereto. The requirement of Order 41 Rule 31 is very specific. The appellate Court shall state the points for determination, the decision thereon and the reasons for decision. These ingredients are totally lacking in the order. Further, I find unusually lengthy sentences without conveying any meaning. He used the expressions "as per the rationale of the decision reported in....." and at some places "as per the reasonable of the decision reported in.....", which I feel either inaptly worded or the learned Judge did not take sufficient precaution to correct the draft Judgment. This clearly discloses the casual approach of the lower appellate Court while dealing with an appeal. The

entire para-8 extracted below contains only two sentences and any amount of meticulous reading would not give the clue leave alone the I meaning which the Court intended to express.

"8. From the persual of the contents of the "Will deed" in Ex. A-1 as to the mode the executant of the said "Will" has adopted for disposal of some of his property creating limited rights of life estate in his wife, without envisaging any strong and specific reasons for such differential and partial treatment and making a favourable disposition of his property with all rights including that of vested remainder also in the plaintiffs, without any specific and strong reasons to that effect to have differential and preferential over to his wife, who was said to have within him all through his life rendering service even during his ailment itself shows how imbalanced was state of mind of the said Raghavulu, the executant of the Will Ex. A-1 at the time of execution of Ex. A-1, if to be delivered the Ex. A-1 as one executed on the strength of the evidence of plaintiff's side interested evidence. When there is no material on record to the effect that during the last days of Raghavulu, the executant of Ex. A-1, his relationship with his wife Gangamma, the appellant (defendant) was so strained and not cordial which lead him to hate her and show its affect on disposition of property in such a differential manner with partiality, towards his brothers and their sons or in alternative where there is no such material by which the strong affection and nearness and dearness of the plaintiff existed to Raghavulu in preference to his wife to give a distinct and preferential go by over her to the plaintiff, the leaving of his wife Gangamma, with such limited rights at the mercy of plaintiffs for her further survivalship till her demise without incorporating any justifying reasons as such in the said Will, as no prudent person could spell such a betrayal to faithful, sincere and honest wife, who sacrificed all her comforts and herself interest to her husband, brings a natural doubt on the sound and disposing state of mind of Raghavulu at the time of execution of Will alleged under Ex A-1 which has support of the evidence of plaintiffs side interested persons."

13. It need not be over emphasised that Judgments and orders of the judicial authorities should be clear, specific, and unambiguous. Expressions used should be intelligible and clear capable of conveying the intended meaning. Complicated and composite sentences lacking syntax and grammar make judicial decisions highly unreadable. Prolixity must be avoided. Every attempt must be made to make judicial decisions meaningful, and capable of conveying with sufficient clarity what is intended to be conveyed.

14. The lower appellate Judge neither followed the procedure laid down in the CPC nor expressed his views clearly. He has only "disposed" of the appeal in a formal sense but not "decided" the same. I feel it is a fit case for remand for disposal afresh and so I am not expressing any opinion on the merits of the case.

15. In the result, the second appeal is allowed, the Judgment and decree in A.S. No. 16 of 1987 are set aside and the appeal is remanded to the lower appellate Court for fresh disposal in accordance with law after hearing the parties. The

lower appellate Court shall dispose of the appeal within two months from the date of receipt of a copy of this order. There shall be no order as to costs. The status quo with regard to suit schedule property obtaining as on to-day shall be continued till the disposal of the appeal by the lower appellate Court.