
(2004) 08 AP CK 0056
In the Andhra Pradesh High Court
Case No : CMA No. 3445 of 2003

M. Lakshman and Others

APPELLANT

Vs

V.T. Rao and Others

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (2004) 6 ALD 154

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Y. Srinivasa Murthy for T.S. Anand, for the Appellant; M.R.S. Srinivas, for the Respondent

Judgement

L. Narasemha Reddy, J.—This civil miscellaneous appeal is filed under Rule 58(4) of Order XXI C.P.C. against the Order dated 30-7-2003 in E.A. No. 404 of 1995 in E.P. No. 25 of 1993 passed by the learned Principal Senior Civil Judge, R.R. District.

2. The first respondent filed O.S. No. 287 of 1987 against Respondents 2 to 11, for the relief of specific performance of an agreement of sale said to have been executed by Respondents 2 and 3. The suit was decreed. The first respondent filed E.P. No. 25 of 1993. A sale deed is executed in accordance with the decree. At the stage of delivery of possession, the appellants filed E.A. No. 404 of 1995 under Rule 58 of Order XXI C.P.C.

3. According to the appellants, the property in question was held by late Dasarath, the father of Appellants 1, 2 and Respondent 4. It is their case that late Dasarath died intestate on 7-1-1983 and the property left by him was not partitioned. They state that Respondents 2 and 3, who are wife and son, respectively of Respondent No. 4,, without any title or right, had entered into an agreement of sale with the first respondent. They also referred to suits, being O.S.Nos.35 and 36 of 1987 on the file of Junior Civil Judge, Medchal, filed by them for declaration of their title in respect of the land.

4. The first respondent filed a counter- affidavit denying the allegations of the appellants. He narrated the circumstances, under which the agreement of sale came to be executed in his favour, and the decree was passed. Respondents 2 and 3 also filed counter-affidavit. They pleaded that late Dasarath executed two deeds of settlement, marked as Exs.B1 and B2, in their favour respectively, in his capacity as an executor of Will dated 6-11-1962 executed by late Enkamma, the first wife of Dasarath and mother of Respondent No. 4.

5. Before the executing Court, the first appellant examined himself as C.W.I. He also filed the judgments and decrees in O.S. Nos.35 and 36 of 1987, being Exs.C-1 to C-4. No other documents were filed. The first respondent examined himself as R.W.1 and marked Exs.B1 and B2, the deeds of settlement. Through its judgment under appeal, the executing Court rejected the claim of the appellants.

6. Sri Y. Srinivasa Murthy, learned Counsel for the appellants, submits that there is serious dispute as to the ownership in relation to the suit schedule property. According to him, the appellants filed two suits, being O.S. Nos.35 and 36 of 1987, in respect of suit schedule properties and that they were decreed. It is stated that the decrees were set aside in the appeal and the matters are remanded to the Trial Court for fresh consideration. He contends that Respondent No. 4, late Bikshapathi @ Raju was one of the sons of late Dasarath and at the most he could have got a share along with Appellants 1 and 2 in the suit schedule property. He submits that the suit was filed in collusion in order to deprive the appellants of their legitimate share in the property.

7. Sri M.R.S. Srinivas, learned Counsel for the first respondent, on the other hand, submits that the property was, in fact, held by Enkamma, the mother of Respondent No. 4, and she executed a Will dated 6-11-2002 directing that the property be passed on to her son Bikshapathi @ Raju and her husband Dasarath was assigned the role of executor. He contends that the property was not part of the joint family assets and Respondents 2 and 3 held valid title to transfer the land in favour of the first respondent.

8. The suit filed by the first respondent for specific performance of an agreement of sale, executed by Respondents 2 and 3 was decreed. He filed E.P. No. 25 of 1993 for execution of the decree and a sale deed was executed by the trial Court. At the stage of delivery of possession, the appellants submitted their claim. The substance of their claim is that the property was held by late Dasarath and he died intestate leaving behind him, their mother, the third respondent and three sons i.e., Appellants 1 and 2 and Respondent No. 4. They pleaded that the joint family properties were not partitioned and the fourth respondent did not have any exclusive right as regards the suit schedule property, much less his wife and son, Respondents 2 and 3.

9. The evidence on record discloses that the suit schedule property was initially held by one Enkamma, wife of Dasarath. Dasarath had a son viz. Bikshapathi @Raju through his first wife. He had also married the third respondent and had

Appellants 1 and 2 through her. Enkamma executed a Will dated 6-11-1962 directing that the property be passed on to Respondent No. 4 or his legal heirs. It was in this context that Dasarath executed two deeds of settlement, marked as Exs.B-1 and B-2 in favour of Respondents 2 and 3. It was on the strength of these deeds, that Respondents 2 and 3 entered into an agreement of sale with the first respondent.

10. The claim of the appellants deserves consideration, if only they are in a position to establish that the property was held by the joint family and that partition is yet to take place. They did not dispute the existence of the Will executed by late Enkamma or the deeds of settlement i.e., Exs.B-1 and B-2. If they are aggrieved by these documents, they have to seek necessary declaration in relation to the same. It is stated that the purport of filing O.S.Nos.36 and 37 of 1987 on the file of Junior Civil Judge, Medchal, covers this aspect. Till a competent Court of civil jurisdiction declares that the Will dated 6-11-1962 and the documents Exs.B-1 and B-2 are illegal or inoperative in law, the rights of Respondents 2 and 3 in relation to that land cannot be scuttled in any way.

11. Though a claim under Rule 58 of Order XXI C.P.C. deserves to be treated as an independent suit, it is too difficult to permit adjudication of unrelated claims in it. The claims that can be decided under Rule 58 should have an immediate or proximate relevance to the subject-matter of the decree. Adjudication of claims, which are remotely connected, or not immediately related to the subject-matter of the decree, cannot be undertaken in an application filed under Rule 58 of Order XXI C.P.C. At any rate, the appellants filed independent suits to work out their remedies. The respondents are said to be the parties to that suit. Since the validity of the Will or Exs.B-1 and B-2 was not the subject-matter of the present suit or the application under Rule 58 of Order XXI, nothing prevents the appellants from working out their remedies in an appropriate forum in properly instituted proceedings. Adjudication into the same cannot be barred by operation of res judicata, since such questions did not fall for consideration in the present suit. Further, the appellants did not place any reliable material before the executing Court to substantiate their claim. Except filing two judgments and decrees in the suit which admittedly were set aside, they did not come forward with any other material.

12. For the foregoing reasons, it cannot be said that the executing Court committed any irregularity in rejecting the claim of the appellants. Hence, the civil - miscellaneous appeal is dismissed. It is, however, observed that it shall be open to the appellants to work out their remedies in relation to the property in question by seeking necessary declaration, duly the affected parties. The possession that may be delivered to the first respondent, pursuant to the decree, shall be subjected to any adjudication to which he shall be a party.