
(1999) 07 AP CK 0154

In the Andhra Pradesh High Court

Case No : A.S. No. 17 of 1995 and Tr. A.S. No. 1212 of 1999

Mabeeba Begum and Others

APPELLANT

Vs

Gulam Rasool and Others

RESPONDENT

Date of Decision : 28-07-1999

Acts Referred:

Limitation Act, 1963 — Article 59
Specific Relief Act, 1963 — Section 31

Citation : (1999) 4 ALT 496 : (1999) 2 APLJ 119

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : T. Veerabhadrayya, for the Appellant; P. Gangirama Reddy, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—These two appeals are filed by defendants 1 and 2 against the common judgment and decrees in O.S.No. 57 of 1986 and O.S.No. 104 of 1990 dated 3-10-1994 on the file of the Subordinate Judge at Mahaboobnagar. A.S.No. 17 of 1995 was filed in this Court against the decree in O.S.No. 57 of 1986 and whereas in view of valuation, A.S.No. 3 of 1995 was filed on the file of the District Judge at Mahaboobnagar and it was transferred to this Court as per orders in Tr.CMP No. 191 of 1995 dated 6-7-1996 and later numbered here as Tr.A.S.No. 1212 of 1999. Both the suits were filed by respondent No. 1. However, in view of his death, the legal representatives were brought on record as respondents 2 to 10.

2. OS. No. 57 of 1986 is filed seeking declaration of title and permanent injunction and cancellation of registered partition deeds dated 30-4-1976 and 3-5-1976 in respect of plot with an area of 850 Sq. yards out of Ac. 0-39 guntas in Survey No. 44, Subhas Nagar, Mahaboobnagar.

3. O.S.No. 104 of 1990 is filed on 21-9-1989 seeking declaration, title and recovery of possession of an area of 208 Sq. yards out of Ac. 0-39 guntas in the

same survey number.

4. The case of the plaintiff runs on the same plane in both the suits except the reliefs. The plaintiff claimed that he purchased an extent of Ac. 0-39 guntas in Survey No. 44 from one Mohd. Shareef under a registered sale deed and since then, he was in possession and enjoyment. Defendant No. 1 is the sister of the plaintiff and defendant No. 2 is the son of the first defendant. The first defendant was married to Abdul Shukur and resides at Hyderabad. The plaintiff has three other brothers and three sisters. The father is alive. The family members have already partitioned except one other plot and the plaintiff is living separately. Therefore, the suit property is the exclusive property of the plaintiff. There is no concept of joint family and no interest by birth amongst Muslims. As the things stood thus, all the brothers and sisters, including the first defendant, colluded together and fabricated the partition deeds dated 30-4-1976 and 3-5-1976, to which plaintiff is not a party. It is only when the first defendant sought to sell, the plaintiff came to know on 5-7-1988 and he gave notice. The second defendant in the other suit, who is the brother's wife, sold the suit extent to the first defendant under a registered sale deed dated 19-6-1986, in pursuance of which, the first defendant illegally occupied and started making constructions. Hence the suits.

5. The defence in the two suits also proceeds on the same lines. It was denied that the plaintiff is the exclusive owner. The plaintiff had no income of his own on the date of purchase. The father, Mohd. Ismail, was the head of the family and all members were living jointly till 1965. The father died on 21-6-1987. So, the father had purchased the same for the benefit of the family. The extent of Plot No. 44 is 4719 sq. yards to which, the father added another extent of 1281 sq. yards by purchasing the same from the Municipality. So by including the entire area, partition was effected under registered partition deeds dated 30-4-1976, 1-5-1976, 3-5-1976 and 4-7-1976 by the family members including the plaintiff. The plaintiff, his wife and children were allotted property. The plaintiff himself sold 1000 Sq. yards, which was allotted under these partitions, under registered sale deed dated 2-4-1979. Further, the plaintiff himself applied to Government for prior permission to effect partition, whereupon, the Government accorded permission under Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienations) Act and acted upon. Having executed the deeds, the plaintiff cannot plead ignorance. Therefore, the relief claimed is barred by limitation. All the members have already sold their respective allotted properties and the purchasers have made constructions. In addition, the first defendant in the other suit asserted his claim under the registered sale and stated that he has already made construction.

6. On the issues as framed in the Court below, the plaintiff has examined P.Ws. 1 and 2 and marked Exs. A-1 to A-7 and the defendants examined D.Ws. 1 to 4 and marked exhibits B-1 to B-10. Considering the evidence, both the suits were decreed holding that the plaintiff is the owner and entitled for the reliefs as

sought for.

7. Sri T. Veerabhadrayya, learned Counsel appearing for the appellants in both the appeals contended that the father Mohd. Ismail had four sons and three daughters. He was an ex-jamindar. The plaintiff is the second son. At the relevant point of time, the plaintiff was a minor and student. So, the father had purchased a plot with an area of Ac. 0-39 guntas in Survey No. 44 on 24th Kurdad 1344 F in the name of the plaintiff and further extent of 1281 Sq. yards making it to a total of 6000 Sq. yards. He thought of effecting partition, which required prior exemption under the provisions of the aforesaid Act. Therefore, an application in Ex. B-3 u/s 7(2) of the Act signed by all the members including the plaintiff was filed before the Government. Thereupon, under Ex. B-4 dated 18-1-1976, the Government accorded exemption. And the partition was effected under Ex. B-5 to B-8 dated 1-7-1976, 3-5-1976, 30-4-1976 and 4-5-1976, in which the plaintiff has signed. The partition was acted upon by all the members. The plaintiff has conveniently filed suit in O.S.No. 57 of 1986 against the defendants therein who are allotted the said extent under Ex. B-6. Similarly, other suit in O.S.No. 104 of 1990 was filed against the second defendant in respect of an area allotted to her under Ex. B-5 and the first defendant being the purchaser had made constructions. In spite of being a party-signatory, the plaintiff conveniently denied knowledge and falsely shown the date of knowledge as 5-7-1986. Further the plaintiff admitted in Ex. B-9 dated 2-4-1979, relinquishment deed, that the entire plot was purchased for the benefit of the family but registered in his name. Therefore, the plaintiff not only being a party, but having knowledge thereby, could not plead innocence and, therefore, the suits filed on 21-9-1989 and 17-7-1986 are barred under Article 59 of the Limitation Act. Even otherwise, it was contended that the simpliciter suit for declaration of title as filed without seeking the cancellation of the documents in Exs. B-3 to B-8 is not maintainable under the provisions of Section 31 of the Specific Relief Act and thus, the arguments are restricted only on these pure questions of law without going into the merits of the respective claims.

8. Sri P. Gangirama Reddy, Counsel appearing for the respondent-plaintiff, sought to support the findings and sustain the decrees on the plea that there is no conception of joint family or right by birth amongst the Muslims unlike the Hindus. The purchase made in the year 1344 F is an absolute one and as such the respondent-plaintiff is the absolute owner and title holder and is in possession and the question of any creation or any vesting of any right, title or interest in the members of the family does not arise. Therefore, it was contended that the partition deeds in Exs. B-5 to B-8 are totally void and would not create right in favour of the members of the family under the said deeds. Even though there was a partition earlier, and the plaintiff living separately and the father having died in the year 1987, it was alleged that the defendant along with the other brothers and sisters colluded and created these documents only with a view to deprive the plaintiff's legitimate vested right. Therefore, Exs. B-3 to B-8 or even Ex. B-9 are void and would not create any right. All the brothers are not

parties to the partition deeds and, therefore, it is not a complete transaction. Further the members under Ex. B-9 are totally different and does not take away the rights of the plaintiff. It was contended that the trial Court has gone into the entire evidence and material and gave a finding that the plaintiff was a major at the time of purchase and had means and therefore, the property belongs to the plaintiff alone and Exs. B-3 to B-8 do not confer any title and the said documents being void, there is no limitation for the purpose of filing the suits. The learned Counsel has also taken me through the evidence on the merits of the case to show that the partition deeds are sham and not acted upon, being nominal. It was clear that pending the suit, there was an interim injunction in I.A.No. 507 of 1986 granted on 23-7-1986 and the same was made absolute and, therefore, possession was not delivered and the defendant No. 1 in the other suit cannot make any claim of possession. In these appeals, the said injunction is not suspended and the only interim order obtained by the appellants is against alienation. The parties being Muslims, the partition deeds and all the documents being void, there is no pre-existing rights for partition. Therefore, in case of void documents, Article 59 of the Limitation Act does not apply. It was pointed out that the exemption under Ex. B-4 was granted subject to filing of the declaration under the Land Ceiling laws and since no such declaration has been filed, Ex. B-4 has no effect.

9. In reply, the learned Counsel for the appellants contended that the lower Court did not properly go into the main questions as to the binding nature of the documents and limitation vis-a-vis the maintainability of such suits in the absence of seeking cancellation of the deeds-the plaintiff being party to those documents and the claim being that the said deeds are void. It was further, argued that under the Muslim Law, there is no prohibition of the existence of joint tenancy and in view of the documents already executed long back, the estoppel u/s 115 of the Evidence Act also steps in and there is absolutely no cause of action for filing the suit. In view of the rival contentions raised by both the Counsel, the questions which fall for consideration in these appeals are:

(1) Whether the suits seeking declaration of title and other consequential reliefs as filed by the respondent plaintiff are not maintainable and barred by limitation?

(2) Whether the respondent plaintiff is entitled for declaration of title and other consequential reliefs.

10. Before going into the merits of the claims as made by both the parties, the admitted facts are that the entire plot of an extent of Ac. 0. 39 guntas was purchased in the name of the plaintiff on 24 Khurdad 1344 F to which a further area of 1281 sq. yards was added by the father by purchasing it from the Municipality. Admittedly, the application under Ex. B-3 u/s 7(2) of the Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 seeking exemption in view of the prohibition contemplated thereunder was filed by the members of the family and it includes the plaintiff. In pursuance of the said application, the Government granted exemption under Ex.B-4 dated

24-1-1976 for effecting the partition, of course subject to filing of the declaration. Consequent to the said exemption, the partition was effected under Exs.B-5 to B-8 dated 1-5-1976, 3-5-1976, 30-4-1976 and 4-5-1976 wherein the members of family have been allotted respective shares including the plaintiff. In fact, under these documents, the plaintiff, his wife and children were allotted 210 sq. yards, 220 sq. yards, 110 sq. yards and 320 sq. yards respectively totaling to 1850 sq. yards and the plaintiff is a signatory to these documents.

11. Under Ex.B-9, registered relinquishment deed dated 2-4-1979, the plaintiff and his wife relinquished their rights in favour of the other members of the family. The plaintiff and his children have sold 750 sq. yards to the sister Sofia Begum under a registered deed dated 2-4-1979. The execution of these documents and the plaintiff being a signatory is not denied or disputed by which it is clear that the plaintiff cannot plead total ignorance or lack of knowledge. However, the plaintiff has come out with a cause of action on 5-7-1986 for filing of these suits on 21-9-1989 and 17-7-1986. Therefore, necessarily if at all the plaintiff wants to attack the registered documents, which are completed transactions and to which he is a signatory, he has to seek cancellation of those documents as contemplated u/s 31 of the Specific Relief Act, which reads as under:

"31. When cancellation may be ordered: (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

12. In the absence of any such relief of cancellation of the documents, the suit simpliciter filed for declaration of title is not maintainable. Though the plaintiff has pleaded the void nature of the said documents on the ground that there exists no conception of joint family or right by birth under the Muslim Law, it would not suffice to ignore such documents to which a party is a signatory. I have already held in A.S. No. 3037 of 1985 dated 5-7-1999 that in respect of completed transactions, to which a person is a party-signatory, he has to necessarily file a suit for cancellation of the document, without which any other relief sought for is not maintainable.

13. If at all any cause of action has arisen, it dates back to the date of application under Ex.B-3. No doubt, the application does not bear any date, but even taking the date of the exemption granted under Ex.B-4, it commences on 28-1-1976. Article 59 of the Limitation Act contemplates a period of limitation of three years in respect of suits seeking to cancel or set aside an instrument or

decree or for the recession of a contract. It reads:

Period of Time from which the period Limitation begins to run: "59. To cancel three years When the facts entitling the or set aside an plaintiff to have the instrument or instrument or decree cancelled or set aside or the decree or for contract rescinded first become recession of a known to him. contract.

14. There is no dispute as to whether the deeds in question come within the ambit of "instrument" under both the above provisions. So, necessarily, if one wants to avoid a deed, it is only through the mode of suit seeking cancellation thereof and the period prescribed is three years. Added to this, the estoppel arising against, binds the executor of a deed from resiling. And, compels one to seek remedy of cancellation necessarily, on the grounds available under the law.

15. It is a evident from the conduct of the plaintiff himself that the said partitions were acted upon as evident from Ex.B-9 dated 2-4-1979 whereunder he has relinquished his rights in favour of the other members of the family viz., Mohd. Ismail, M.A. Rehman, Hazara Begum. Further, he along with his children has sold 750 sq. yards to Sofia Begum, another sister, under a registered document No. 619 dated 2-4-1979.

16. The learned Counsel for the appellants relied upon the decision of the Madras High Court in Obanna v. Gangaiah, AIR 1945 Madras 361 and the learned Counsel for the respondent relied upon the decisions in Rebti Devi v. Ram Dutt AIR 1998 SC 310 R. Rajagopal Reddy (dead) by L.Rs. and others Vs. Padmini Chandrasekharan (dead) by L.Rs., ; Vemana Somalamma and others Vs. Deputy Collector, Tribal Welfare, Rampachodavaram, E.G. Dist., and others, ; D. Krishna Murthy and Others Vs. C. Ramana and Others, ; Mohd. Ibrahim v. Syed Mohd. Abu Bakker, AIR 1976 Madras 84 V.N. Sarin Vs. Ajit Kumar Poplai, and C. Mohammed Yunus Vs. Syed Unissa and Others, in support of his case.

17. In Obanna¹, the Madras High Court while considering Section 18 of the Evidence Act has held that where several persons are jointly interested in a subject matter of the suit, an admission by any one of them is admissible in evidence not only against himself but also against the other defendants. In that case, an objection was sought to be raised at the stage of appeal which was rejected. It is true that any admissions by a person in a joint state of affairs and especially against himself are relevant and binding on others.

18. In Yaggana Obanna and Others Vs. Kutagulla Gangiah and Others, and R. Rajagopal Reddy (dead) by L.Rs. and others Vs. Padmini Chandrasekharan (dead) by L.Rs., cases arising under the Benami Transactions (Prohibition) Act, Act 45 of 1988 - it was held that the plea of benami raised in proceedings pending on the date of Section 4 on 19-5-1988 is not affected by the provisions and the permissibility of such pleas raised after 19-5-1988 covered under the exception have been explained. There is no dispute as regards the permissibility of such a plea in view of the principles laid down thereunder. However, the permissibility of the said plea or any bar as such has no relevance in view of the

facts of this case, where the plaintiff himself is a signatory to all the documents, which remained unchallenged and which disentitles the plaintiff from seeking any such plea.

19. In Somalamma (4 supra), a Full Bench of this Court while considering the transfer of land in a scheduled area by a non-tribal to a non-tribal - being void - held that restoration under invalid transfer can be made. However, the facts thereunder pertain as to the invalidity of a document under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation as amended by Regulation 1 of 1970 and do not cover a voluntary completed transaction as has arisen in these cases. Therefore, the said decision has no application to the facts of these cases.

20. In D. Krishna Murthy (5 supra) - a case where a suit for declaration challenging the transfer of trust property by a trustee was filed within twelve years - a Division Bench of this Court while considering Article 59 of the Limitation Act has held that the said Article has no application since the trustee of a religious endowment cannot alienate the trust properties. The incidence of trust properties vis-a-vis the rights of the trustees totally stand apart from the individual proprietary rights and the completed transactions executed by them. Therefore, the said decision cannot be put on par with the facts of these cases.

21. The decision in Mohd. Ibrahim (6 supra) was pressed into service to support the principle that the personal law of Muslims does not recognise the system of joint holding as is common amongst the Hindus and no presumption arises to show that the acquisition of one or more of the properties of the family is for the benefit of the family unless there is proof to the contrary as children in a Mohammedan family are not co-owners in the sense that what is purchased by one parcener does not ensure to the benefit of another. There is no dispute as to the well laid principles under the Mohammedan Law. No doubt the conceptions under the Hindu Law have no foundation amongst the Muslims and they cannot be made applicable. But in a given case, one cannot rule out the existence of a joint tenancy amongst the Muslims, subject however to the evidence and proof thereof. In these cases, as observed already, in view of Exs.B-3 to B-9, it is evident that the members of the family including the plaintiff have treated the suit schedule property as one belonging to the family and effected the partition and acted upon the same.

22. The decision of the Supreme Court in Sarin (7 supra) is cited to show the principles governing joint family and partition and the nature of such transaction under a Hindu Joint Family. As observed earlier, there is no dispute on these basic principles under the respective laws amongst the Hindus and Muslims.

23. The decision of the Supreme Court in Mohd. Yunus (8 supra) was sought to be relied on to contend that the declaratory relief with consequential reliefs as sought in these cases is maintainable and the limitation for right to sue accrues on infringement of or threat of infringement of the right. The said case totally

stands on a different footing on the facts wherein against a religious institution, a suit was filed seeking declaration in respect of performance of certain ceremonies. Therefore, again, the facts totally stand apart and have no application to the present situation on hand.

24. In view of the clear provisions u/s 31 of the Specific Relief Act and Article 59 of the Limitation Act, there is no proper foundation laid under the law by the respondent plaintiff herein on the maintainability of the suits without seeking cancellation of the deeds and to bring it within the period of limitation. The cause of action as shown in these cases has no basis. In fact, the cause of action, if any, has arisen as long back as in the year 1976. The suits filed on 21-9-1989 and 17-7-1986, therefore, are barred by limitation under Article 59 of the Limitation Act. Accordingly without going into the merits of the case and the respective pleas on the facts, it is held that the suits are not maintainable and liable to be dismissed on that score.

25. Hence in view of the above findings, both the appeals are allowed and the judgment and decrees in both the suits are set aside and the suits are dismissed. However, in the circumstances, there shall be no order as to costs.