

(1999) 09 AP CK 0130
In the Andhra Pradesh High Court
Case No : SA No. 610 of 1988

M.C. Chinna Nagamma

APPELLANT

Vs

M.C. Giddamma and another

RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Article 64, 65
Transfer of Property Act, 1882 — Section 6

Citation : (1999) 6 ALD 535

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. K. Somakonda Reddy, for the Appellant; Mr. K.V. Chalapathy Rao, for the Respondent

Judgement

1. This appeal is preferred by the plaintiff being aggrieved by the judgment and decree dated 12-9-1988 passed by the II Additional District Judge, Kurnool in AS No.76 of 1983. By the impugned judgment and decree, the lower appellate Court set aside the judgment and decree of the Principal Subordinate Judge, Kurnool dated 25-6-1983 on OS No.3 of 1981 and consequently dismissed the plaintiff's suit. Hence, the plaintiff is before this Court in this second appeal.

2. The learned Counsel appearing for the appellant-plaintiff strenuously contended that the impugned judgment and decree of the appellate Court are illegal and contrary to the evidence on record. He further submitted that the appellate Court is in error in holding that there was a partition between Chinna Nagamma and Pedda Nagamma during the life time of their mother Chenchamma, wife of Pullanna and the appellate Court failed to see that after the death of Chenchamma, the plaintiff has been in possession of the entire property as the owner and accordingly the plaintiff was entitled for declaration and possession. On the other hand, the learned Counsel appearing for the respondent-defendant No.1 contended that on the basis of the evidence both oral and documentary, particularly Exs.B1 and B2, the registered lease deeds showing

that Akula Chenchamma and Chintala Seshanna (husband of DI) leased the property and ultimately vide Exs.B8 to B42 ryotwari pattas were issued in the name of defendant No.1 regarding her share and the appellate Court has rightly concluded that there was a partition during the life time of Chenchamma, between Pedda Nagamma and Chinna Nagamma, the plaintiff and accordingly reversed the judgment and decree of the trial Court. He further submitted that at any rate, the suit filed by the plaintiff was barred by time and having regard to these circumstances, the appellate Court rightly dismissed the suit and the judgment and decree of the appellate Court do not call for any interference at the hands of this Court u/s 100 of CPC.

3. In order to appreciate the rival contentions, I have to briefly note the facts of this case. The plaintiff filed a suit in OS No.3 1981 (old No.437 of 1974 on the file of District Munsif Court, Nandikotkur) for declaration and injunction and alternatively for possession regarding the land in SyNo.269/2-B. The plaintiff also has filed another suit in OS No.30 of 1981 for injunction in the land bearing No.269/2B. In both the suits, the case of the plaintiff was that the land originally belonged to Pullanna, the father of the plaintiff, who died in the year 1920 leaving behind him his wife Chenchamma and two daughters by name Pedda Nagamma (mother-in-law of defendant No. 1) and Chinna Nagamma (the plaintiff). Pedda Nagamma died in the year 1937. After her death, the mother of the plaintiff was in possession and enjoyment of the plaint schedule property till her death in the year 1954 and after her death, the plaintiff has become the absolute owner of the entire survey land and consequently she is entitled to be declared as owner, as per the Hindu Succession Act and an injunction also may be granted, and in case the Court holds that the plaintiff was not in possession of the property, the possession may be ordered. The first defendant by filing a written statement, contested the suit. She denied the case of the plaintiff as pleaded by her in the plaint. She contended that after the death of their father Pullanna, in the year 1920, Pedda Nagamma and Chinna Nagamma had divided the property and half of the suit property was in possession of the respective daughters with the consent of their mother Chenchamma and accordingly, Pedda Nagamma was in possession regarding the half of the property. She died in the year 1937, leaving behind her only son Shesanna and this Sheshanna also died in the year 1958 leaving behind his widow defendant No.1 and accordingly defendant No.1 is in possession of the half of the property all along and she has sold that property in favour of defendant No.2 for her family necessities. Defendant No. 1 pleaded that having regard to these circumstances, the plaintiffs suit was liable to be dismissed and the sale deed executed by defendant No. 1 in favour of defendant No.2 was not a nominal or sham document as alleged by the plaintiff. She further contended that plaintiff has never been in actual possession of the plaint schedule property (half of the total extent). Defendant No.1 further contended that these lands were the service inam lands and after their abolition under Andhra Inams Abolition and Conversion Act, 1956, ryotwari pattas were granted by the revenue authorities to the extent of half to defendant No.1 and

other half to the plaintiff and accordingly the plaintiff and defendant No.1 have been in possession of their respective half, shares in the suit schedule property. Thus, the defendant No.1 has been the owner and possessor of half of the suit land and consequently the suit of the plaintiff regarding this half of the suit land under the ownership and possession of defendant No.1 is liable to be dismissed.

4. The plaintiff examined herself as PW1 and she also examined PWs2 and 3 to prove her possession. She got marked Exs.A] to A132. On the other hand, the defendant No.1 got herself examined as DW1 and other witnesses as DWs2 to 5. She also got marked Exs.B1 to B64. Other documents vide Exs.X1 to X4 and Exs.C1 to C8 are also marked in the case by the Court. On the appreciation of the entire evidence on record, the trial Court held that the plaintiff is the owner of the entire extent of the land after the death of her mother Chenchamma. It further held that the plaintiff has not proved her possession, but possession follows title and, therefore, injunction can be granted in favour of the plaintiff. The appellate Court on reappreciation of the entire evidence, held that after the death of Pullanna in the year 1920, there was a partition between Pedda Nagamma and Chinna Nagamma in the presence of their mother Chenchamma and after the death of Chenchamma in the year 1954, respective parties have been in possession as the owners to the extent of their share. It held that after the death of Pedda Nagamma in the year 1937, her son Sheshanna has been in possession of the property and after his death, his wife defendant No.1 has been in possession of the property and consequently alienation made by defendant No. 1 in favour of defendant No.2 could not be declared as illegal and void. Consequently, by allowing the defendant No.1's appeal, dismissed the plaintiff's suit in its entirety. As I have already stated above, it is in these circumstances, the plaintiff has come to this Court in this second appeal.

5. On the basis of the pleadings and evidence on record, a few facts are clearly admitted. It is admitted that the properties belonged to Pullanna who died in the year 1920, leaving behind his widow and two daughters Pedda Nagamma (mother-in-law of defendant No.1) and Chinna Nagamma (plaintiff). It is also not in dispute that their mother Chenchamma died in the year 1954. It is also not in dispute that by IA No. 1254 of 1980 the plaintiff sought for an amendment of the plaint. By allowing the said amendment, the Court below permitted Para No.6(A) and also other consequential amendments on the basis of valuation of the suit properties, restricting the claim of the plaintiff to the extent of half. On the basis of this amendment, the teamed Counsel for the defendant No.1 contended that as per the plaintiff's case itself, the plaintiff is the owner of half of the suit property and other half is under the ownership and possession of defendant No. 1. As against this argument, the learned Counsel for the appellant-plaintiff contended that it is only as an alternative prayer and it cannot be said that the plaintiff accepts the title of defendant No.1 regarding the half of the suit land. But from the reading of the entire plaint along with the amendment, in my opinion what the plaintiff contended was that she is the owner of half of the property partitioned and there should be a decree regarding the other half. It is also the

case of defendant No.1 that she is in possession of half of the suit schedule property and the other half is in possession of the plaintiff. From this it follows that the plaintiff is disputing the title of the defendant No.1 regarding the property in possession of defendant No.1 only. But at any rate, the things do not stop at that stage. Having regard to the facts and circumstances of the case, the appellate Court gave a finding that the plaintiff herself was not sure of her case as observed by the trial Court. The appellate Court by believing the evidence on the side of the defendants held that the suit property was divided in equal shares and according to the evidence of DW1 her mother-in-law Pedda Nagamma died only when her husband was three years old and it is her mother-in-law's mother by name Chenchamma (wife of Pitlanna) who brought up her husband by enjoying the property that fell to the share of her mother-in-law Pedda Nagamma. Defendant No.1 further stated that her marriage took place in the year 1953 and her husband died in the year 1958. During their life time, both Seshamia and his grand-mother Chenchamma leased out the lands that fell to the share of Pedda Nagamma to one Sivanna, by executing Exs.B1 and B2 registered sale deeds dated 7-3-1953. The appellate Court observed that if the properties were to be joint, Chenchamma and Seshamia could not have leased the properties under these documents Exs.B1 and B2, dated 7-3-1953. The appellate Court also relied upon the Commissioners report vide Ex.C1 with regard to suit items 5 and 6 showing that the property was divided into two half by a boundary. The appellate Court also took into consideration Exs.B3 to B7, the land revenue receipts of the property in question and also the pattas for the suit property vide Exs.B38 to B42, showing that these lands were inam lands and under Inam Abolition Act, pattas were granted to defendant No.1 and plaintiff regarding half of the property each. To the same also is the effect of revenue receipts Exs.B38 to B48 and also 10(1) accounts etc. Apart from that DWs 4 and 5 who were the village Munsif and Karanam respectively, also spoke to the same effect that the properties were divided between defendant No.1 and the plaintiff and land revenue is being collected from the respective parties. Consequently, the appellate Court held that the plaintiff has been in possession and enjoyment of half of the property and defendant No. 5 has been in possession and enjoyment of other half of the property. Even DWs.6 and 7, the village Munsif and the Karanam also spoke to the possession of the respective parties and the collection of the land revenue from them regarding their respective shares. Even according to me as per Exs.B38 to B42 ryotwari pattas were granted in favour of plaintiff and defendant No.1 under Inams Abolition Act and this clearly prove that the plaintiff and defendant No.1 were the owners and possessors regarding half of the land each. Once a patta is granted under the Inams Abolition Act, it is granted free from all other encumbrances and on the basis of Exs.B43 to B45, parties get their title straightaway to the property. These orders granting pattas under Inams Abolition Act vide Exs.B43 to B45 have not been challenged by the plaintiff and they have become final. Even Exs.B47 and 10(1) extract of the accounts also is to the same effect. In fact, Exs.A111 to A118 produced by the plaintiff are also to the same effect. On the basis of the entire evidence both oral

and documentary, the appellate Court has clearly given a finding that there was an oral partition between the plaintiff and defendant No.1's mother-in-law during their life time Chenchamma their mother and accordingly they have been in possession of the respective shares and the same has been recognised and pattas have been granted by the authorities under the Inams Abolition Act. The appellate Court concluded that in this view of the matter, the plaintiff cannot succeed in her suit and accordingly dismissed the suit.

6. However, the learned Counsel appearing for the appellant-plaintiff strenuously contended that after the death of Pullannah and during the life time of Chenchamma, the properties could not have been divided between the plaintiff and mother-in-law of defendant No.1. He further contended that Chertchamma herself having a limited estate under Hindu Women Right to Property Act, could not divide the property amongst her two daughters Pedda Nagamma (mother-in-law of defendant No.1) and Chinna Nagamma, the plaintiff. On the other hand, the learned Counsel appearing for the defendant No.1 strenuously contended that when with mutual consent the parties have agreed to divide the properties prior to the death of Pedda Nagamma in the year 1937, the same cannot be challenged in a suit filed in the year 1974. He further submitted that at any rate, the suit filed in the year 1974 by the plaintiff as reversioner of Chenchamma would be barred by time under Article 65(b) of the Limitation Act. In support of his contention, he relied upon the judgments of the Supreme Court reported in Karpagathachi and Others Vs. Nagarathinathachi, and Brahmavart Sanathan Dharam Mahamandal, Kanpur and Others Vs. Prem Kumar and Others, . He submitted that the conclusions arrived at by the appellate Court do not call for interference at the hands of this Court. However, the learned Counsel appearing for the appellant-plaintiff contended that this being a suit based on title, it is for the defendant No.1 to prove adverse possession and mere being in possession for 12 years does not confer her any title. In support of his contention, he relied upon the judgments reported in Prapul Chandra Mukpalkar and Another Vs. P. Ramachandra Reddy and Another, , M. Harichandra Prasad Vs. Chitturi Krishnamurthy and Others, , Angati Venkateshwarlu@Appalakonda@Konda Vs. Maharani-peta Military Mosque, and Chhote Khan, deceased, Represented by his Son, Harmat and Others Vs. Mal Khan and Others, . He also relied upon certain paragraphs under the Hindu Law.

7. Regarding the legal position, I am immediately referring to the judgments of the Supreme Court in order to find out whether the alleged partition held proved between the plaintiff and Pedda Nagamma, prior to her death in 1937 is valid or not. It cannot be disputed under the law (that after the death of her husband, Chenchamma, the mother of the plaintiff and Pedda Nagamma, was the limited owner as a widow of PitUannah. In a similar circumstance in the decision reported in Karpagathachi's case (cited supra), the Hon'ble Supreme Court held that the co-widows as limited owners had partitioned the property and such a partition would have the effect of extinguishing the right of survivorship. The Supreme Court pointed out that a limited co-widow could relinquish her rights in

favour of each and after such division of the property, their respective heirs succeed to the property, but not by survivorship. But, however the Supreme Court pointed out in that case that such a partition should be proved by cogent evidence. But having regard to the facts and circumstances in that case, the Supreme Court held that partition was not proved on the basis of the evidence on record. But in the instance case, such a partition is proved. In this view of the matter, the observation of the Supreme Court in the said judgment (i.e., Karpagathachi's case, (supra) at Paragraph No.3 of the judgment squarely applies to facts of this case. The observation made at Paragraph No.3 of the said judgment is extracted as under:

"We are of the opinion that the first contention of Mr. Viswanatha Sastry should be rejected. Under the Hindu Law as it stood in 1924, two widows inheriting their husband's properties took together one estate as joint tenants with rights of survivorship and equal beneficial enjoyment. They were entitled to enforce a partition of those properties so that each could separately possess and enjoy the portion allotted to her, see *Bhugwan Deen Doobey v. Myna Baee*, 11 Moo Ind App 48/(PC), *Gauri Naih Kakaji-v. Ml. Gaya Kuar*, 55 Ind App 399 - AIR 1928 PC 251. Neither could without the consent of the other enforce an absolute partition of the estate so as to destroy the right of survivorship, see *Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna*, . But by mutual consent they could enter into any arrangement regarding their respective rights in the properties during the continuance of the widow's estate, and could absolutely divide the properties, so as to preclude the right of survivorship of each to the portion allotted to the other. See *Ramakkal v. Ramasami Naickan*, ILR 22 Mad 522, *Sundalani Animal v. Gomathi Ammal*, 23 Mad LJ 355. Likewise, two daughters succeeding to their father's estate as joint tenants with right of survivorship could enter into a similar arrangement. See *Kailasli Chandra Chuckerbutly v. Kashi Chandra*, ILR 24 Cal 339, *Subbammal alias Pichu Ammal Vs. Krishna Aiyar through his Father and Guardian G.K. Lakshmana Iyer*, , *Ammani Ammal and Others Vs. Periasami Udayan and Others*, . Such an arrangement was not repugnant to Section 6(a) of the Transfer of Property Act, 1882 . The interest of each widow in the properties inherited by her was property and this property together with the incidental right of survivorship could be lawfully transferred. Section 6(a) of the Transfer of Property Act prohibits the transfer of the bare chance of the surviving widow taking the entire estate as the next heir of her husband on the death of the co-widow, but it does not prohibit the transfer by the widow of her present interest in the properties inherited by her together with the incidental right of survivorship. The widows were competent to partition the properties and allot separate portions to each and incidental to such an allotment, each could agree to relinquish her right of survivorship in the portion allotted to the other. The first contention of Mr. Viswanatha Sastry must be rejected."

In the instant case, Chanchamma the limited owner divided the property between her daughters Pedda Nagamma, the mother-in-law of Defendant No.1

and Chinna Nagamma, the plaintiff by relinquishing her rights prior to 1937 itself. In view of the above law declared by the Supreme Court, though she was a limited owner, yet it was within the powers of Chanchamma to divide the property amongst her two daughters, by relinquishing her share in the property and as such, the impugned partition cannot be said to be bad. However, in another judgment of the Supreme Court reported in B.S.D, Mahamandal, Kanpur's case (supra), the Hon'ble Supreme Court further reiterated the same principle of law. The Supreme Court in this case pointed out that two widows as limited owners could partition the property. Likewise, the same principle applies even to the daughters also. The limited ownership when it stands enlarged after the commencement of the Hindu Succession Act, the alienee gets all the rights by virtue of the principle of feeding the grant by estoppel. But what the Supreme Court has pointed out is, that such a transfer by partition was voidable at the instance of reversioners. But if there was a consent for such a transfer by the co-widow or by the co-daughter as a limited owner, the transferee would be entitled to protection u/s 43 of the Transfer of Property Act. In the instant case, prior to 1954, the two daughters were in possession of the respective shares and from this it follows that such a partition was with the consent of Chanchamma and her two daughters Pedda Nagamma and Chinna Nagamma and after the death of Pedda Nagamma, her son was in possession, as on the date of the Hindu Succession Act came into force. Since there was a consent on the part of Chanchamma and Chinna Nagamma for such an arrangement of partition in favour of Pedda Nagamma, there can be enlargement of the rights in favour of Pedda Nagamma and consequently in favour of her son Shesanna after 1954. Exs.B1 and B2 clearly establish that Chanchamma and Seshanna, the husband of defendant No.1 leased the suit properties by registered lease deeds, exercising their rights in the year] 953 itself. In these circumstances, if the plaintiff wanted to challenge the partition after she gets the right by survivorship, she could do so by avoiding it. As per the law declared by the Supreme Court, such a partition would be voidable at the instance of the reversioners. But the plaintiff as a reversioner has not challenged such a partition within the prescribed time. This conclusion takes me to the other part of the argument urged by both sides regarding Article 65(b) of the Limitation Act. Article 65 of the Limitation Act provides that the plaintiff must sue for possession on the basis of the title within 12 years from the date the possession of the defendant becomes adverse to the plaintiff. Interpreting Article 65 of the Limitation Act in relation to Article 64, the Courts in India have held that when a suit is filed by the plaintiff on the basis of title, it is for the defendant to prove his adverse possession and if it is a suit for possession on the basis of previous dispossession, the plaintiff should prove his possession within 12 years. To the same effect also is the law declared by the Supreme Court in the judgments reported in P.C. Mukpalkar's case (supra), M. Harischandra Frasad's case (supra) and A. Venkateshwarlu's case (supra). This Court in these circumstances has held that in the case when the suit is based on the title, defendant should prove adverse possession within 12 years and his mere possession for 12 years would not be enough. But in the instant case, it is

not the general principle of law that is in question. But the question in this case is regarding the rights of a reversioner and to such a situation, it is Article 65 explanation (b) of the Limitation Act that is applicable. In order to appreciate the contentions of the respective parties, I think it appropriate to extract the relevant provisions of the Limitation as under:

Description of suit	Period of limitation	Time from which period begins to run
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65. For possession of immovable property or any interest therein based on title.
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Twelve years

When the possession of the defendant becomes adverse to the plaintiff.
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Explanation :-- For the purpose of this Article :-

(a)

(b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies.

From the above Article it is clear that if the reversioner wants to agitate his rights, he could do so within 12 years from the date when the female dies and if the defendant is in possession of the property from the date of death of the female, such possession shall be deemed to become adverse to the plaintiff. From this it follows that explanation "b" to Article 65 of the Limitation Act provides exception to the general principle found under Article 65, dealing with a specific situation. From this it follows that if reversioner wants to agitate the rights as a reversioner under Hindu Law or Muslim Law, he must prove his possession within 12 years from the date of death of such a female whose reversioner such a person claims. In the instant case, the plaintiff claims to be reversioner of Chanchamma, her mother, and Chanchamma, admittedly died in the year 1954 and if that is so, she must file the suit within 12 years from 1954 i.e., on or before the year 1966. During this period, the possession of any other person other than the reversioner shall be deemed to be adverse to such reversioner. Thus if the reversioner fails to file a suit within 12 years, the person in possession perfects his or her right by adverse possession on the basis of the fiction incorporated in the explanation (b) of the Article 65 of the Limitation Act. For this conclusion, I am supported by the judgment of the Madras High Court reported in *Munusamy Achari Vs. Rajambal Ammal and Others*, . I think it appropriate to extract Paragraph No.26 of the said judgment as under:

"26. There is yet another consideration which goes against Mr. Chart's contention. Under Article 65 of the Schedule to the Limitation Act, 1963, a suit for possession of immovable property or any interest therein based on title could be filed within 12 years of the date when the possession of the defendant becomes adverse to the plaintiff. Explanation (b) to that Article says that where a suit is filed by a Hindu entitled to the possession of immovable property on the

death of Hindu female, the possession of the defendant shall be deemed to become adverse only when the female dies. On the basis of this clear statutory provision, the period of limitation in the suit filed by Rajambal against Mtinuswami must be calculated from the date of death of Ammakcmnu, and, so computed, the suit is well within time. We hold, in passing that Article 65 of the Schedule to the Limitation Act, 1963 read with Explanation (b) to that Article applied generally to all suits by Hindu plaintiff where the right to possession is claimed on the death of a female Hindu. The claim may be that of a reversioner of the last male holder or it may be that of an heir of a deceased female Hindu. Whatever be the case, provided the right of possession in the suit property is claimed on the death of a female Hindu, the deeming provision to Explanation (b) to Article 65 would operate, and the suit for possession would be within time if filed within 12 years of the death of the female Hindu on whose death the plaintiff claims possession".

9. Having regard to the facts of the case, the Division Bench of the High Court of Madras held that the suit should be filed within the period of 12 years from the death of the female Hindu on whose death the plaintiff claimed possession. In that case, the High Court of Madras has pointed out that on the basis of the clear statutory provision found under Article 65(b), the period of limitation should be calculated from the date of death of female Hindu, and during that period, the possession of the defendant shall be deemed to have become adverse from the date the female Hindu dies, and if any suit is filed beyond 12 years of such death of female, whose reversioner the plaintiff claims, such suit would be barred by limitation, since the possession of the defendant shall be deemed to be adverse as against the plaintiff. In the instant case, I find that Chanchamma, the female Hindu admittedly died in the year 1954 and the suit should have been filed within 12 years i.e., before 1966 and, therefore, the suit filed in the year 1974 was clearly barred by time. Though this aspect was not considered by both the Courts below, but since this question was raised as a question of law on the admitted facts, I thought it fit to consider the same and accordingly I hold that even on this could also the suit of the plaintiff is liable to be dismissed as barred by time. For these reasons and also on the basis of findings of fact recorded by the appellate Court, I find that the judgment and decree of the appellate Court dismissing the plaintiff's suit, does not call for any interference. Accordingly, I pass the order as under:

The second appeal is dismissed, but in the circumstances without costs.