
(2005) 07 AP CK 0118
In the Andhra Pradesh High Court
Case No : AS No. 945 of 1995

Neelam Bhadramma	Vs	APPELLANT
Marri Lakshamma		RESPONDENT

Date of Decision : 27-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2006) 3 ALD 292

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Ramesh, for E. Kalyanaram and S.V. Bhatt, for the Appellant;
Srinivas, for M. Dasharatha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri Ramesh representing Sri S.V. Bhatt, the learned Counsel for appellant and Sri Srinivas representing Sri Dasaratha Reddy, the learned Counsel for respondent.

2. Both the Counsel made elaborate submissions taking this Court through the pleadings of the parties, the evidence available on record and the findings recorded by the Trial Court.

3. Sri Ramesh, the learned Counsel representing the appellant had drawn the attention of this Court through the affidavit filed in support of the application C.M.P. No. 18112/2000 wherein the relief for reception of additional evidence had been prayed for and would contend that these documents were available during the pendency of the suit, the Counsel had not filed the same and these documents are very essential to prove the factum of possession and hence, for the purpose of proper adjudication of the dispute, the matter may have to be remanded after receiving the additional evidence. The learned Counsel also placed reliance on certain decisions.

4. Sri Srinivas, the learned Counsel representing the respondent, on the contrary

had taken this Court through the findings recorded by the trial Court and would maintain that none of the contentions raised by the appellant-defendant had been established and the plea that certain items are the separate properties and also the plea of illatom son-in-law had not been established and hence, the appeal is liable to be dismissed.

5. Heard the Counsel and perused the oral and documentary evidence and also the findings recorded by the trial Court.

6. The following points arise for consideration in this appeal :

(1) Whether the findings recorded by the trial Court are to be confirmed by this Appellate Court or liable to be disturbed, in any way ?

(2) Whether the husband of appellant-defendant is a necessary party to the suit ?

(3) Whether the respondent-plaintiff is entitled for partition and separate possession of the plaint scheduled properties ?

(4) Whether the husband of appellant-defendant is the illatom son-in-law ?

(5) Whether the application for reception of additional evidence in CM.P. No. 18112/2000 to be allowed or dismissed in the facts and circumstances of the case ?

(6) If so, to what relief the parties are entitled to ?

7. Point Nos. 1 to 3 : For the purpose of convenience, the parties hereinafter would be referred to as plaintiff and defendant. It is needless to say that the unsuccessful defendant had preferred the present appeal.

8. It was pleaded in the plaint that the plaintiff and defendant are the real sisters and their father died about 20 years ago and their mother died on 5-11-1985, at the age of 70 years, and they are the only legal heirs to succeed the properties of their parents. It was also pleaded that the parties are Hindus, belonging to Mutharasi caste, governed by Mitakshira School of Hindu Law. It was also further pleaded that the owner and possessor of the plaint scheduled properties is the late mother of the parties and she died intestate leaving behind the said properties and the parties had stepped into the foot steps of their late mother and have been in joint possession and enjoyment of the plaint scheduled properties. It was also further pleaded that they are entitled to equal shares i.e., half share each in all the plaint scheduled properties. It was also further pleaded that there are no loans incurred by late mother of the parties, and the plaint schedule immovable properties are free of encumbrances. That the original owner of item No. 3 i.e., S. No. 569 (which is locally known as Annaparayani gunti) is Nomula Buchaiah. But the late mother of the parties has got the same is exchange of her land measuring Ac.8-04 gts., out of S. No. 896 situated at Jajireddygudem (which is locally known as Padirigundu Chelka) such exchange was brought in, as the exchanged lands are convenient to the respective parties. That even during the life time of their parents and more particularly after the

death of their father, the parties have been assisting them (percents) and (after the death of their father) their mother and looking after the cultivation and day to day management of the plaint schedule properties. The respective residences of the parties are very near to the plaint schedule properties and they are located in the limits of same revenue village. That during the life time of their mother, there were family differences between the parties. The defendant's attitude and behavior towards the plaintiff was harsh and stricked with selfishness. It is evident from her conduct that she had malicious intention, to knock away the entire properties of Lingampally Sathamma (mother of the parties) and thus deprive the plaintiff of her half share, as and when her mother (Sathamma) dies. The plaintiff had to bear the brunt of malice of her only sister i.e., the defendant very patiently and silently, all these days. That after the death of Lingampally Sathamma (mother of the parties) the defendant has come out in true colours and is openly proclaiming before the caste elders and other villagers that she would grab away the entire plaint schedule properties and that the plaintiff would not be allowed to get her half share. That after the obsequies and other customary rites of her late mother, the plaintiff demanded the defendant for amicable partition of the plaint schedule properties into two equal shares, before the caste and village elders, on 15-11-1985, but she bluntly refused to concede such demand. She has spelt out her opinion that she would exclusively manage and enjoy the entire suit property and in turn give some cash or gain as a goodwill to the plaintiff towards her share. The plaintiff understands that such proposal put forth by the defendant is vague and ambiguous, just to defraud her and thereby deprive of her 1/2 share. Once such proposal was rejected by the plaintiff, she (defendant) is making secrete attempts to sell away the suit properties as far as possible and appropriate such sale proceeds towards her selfish ends. With such unholy intention, the defendant is contacting several prospective vendees with a proposal that her mother has bequeathed the plaint schedule properties to her few days before her death and that she is entitled to sell away the same at her whims and fancies. It is submitted that the suit lands are very conveniently located and are fertile pieces having good features. There are many kinds of fruit bearing and useful trees. Agriculturally and commercially, the suit lands have become assets and as such eyesore to many a passers-by and well to do people. Taking advantage of such rift between the parties many persons are bidding to acquire the suit properties through the defendant who along with family members is determined to sell away the same at any cost and migrate from the present abode to far away place, with the sale proceeds, and thus deprive the plaintiff her undivided interest i.e., half share in the suit properties. That sensing all such evil designs of the defendant and her sons, the plaintiff once again made her best efforts through the village and caste elders five days back to prevail upon the defendant for amicable partition of the plaint schedule properties into two equal shares and put one such share in her separate possession. But she gave evasive response and refused for such settlement. In such circumstances, when the defendant is dodging the process of amicable settlement, the plaintiff has no other remedy except to approach the Hon''ble

Court for a decree of partition and separate possession of her 1/2 share in the plaint schedule properties. These are the facts, which constitute the cause of action to file the suit, and the defendant is liable to reply.

9. In the said circumstances, the plaintiff filed the suit claiming the following reliefs:

(a) For preliminary decree for partition declaring that the parties are entitled half share each in the plaint schedule properties;

(b) For the appointment of a commission to divide the plaint schedule properties by metes and bounds in accordance with the terms of the preliminary decree;

(c) For putting the plaintiff in separate possession of her half share to be allotted in the plaint schedule properties;

(d) For the costs of the suit; and

(e) For any other alternative or additional relief or reliefs which the Hon'ble Court deems fit and necessary in the circumstances of the case.

10. The appellant herein-the defendant filed written statement denying the allegations. It was also pleaded that the plaintiff is not Marri Laxmamma and she is not the wife of Peda Veeraiah and the plaintiff is a divorcee and in 1964, the marriage between the plaintiff and Peda Veeraiah was dissolved by customary divorce and a Divorce Deed was also executed by the plaintiff. It was further pleaded that Para 3 of the plaint is true to the extent that the plaintiff and defendant are real sisters and only issues of their parents. It is also true that the mother of the parties died on 5-11-1985. The father of the parties died in 1967. It is admitted that the plaintiff is an heir to the deceased mother of the parties, but it is denied that she has right to succeed to the properties of parents for the reasons to be stated in additional grounds of this written statement. It was further pleaded that Para 5 of the plaint is false. It is denied that the deceased mother of the parties Lingampally Sattamma was the owner and possessor of the plaint schedule properties and therefore succession to the said properties by the plaintiff does not arise at all. It is also false that the plaintiff and defendant have stepped into the shoes of their mother and that they are in joint possession of the plaint schedule properties in the capacity of co-owners since the date of her death. The mother of the parties had no right over any of the items of the plaint schedule properties, till her death, or thereafter. It was also further pleaded that Para 6 of the plaint is not true. The plaintiff is not having any undivided interest much less an equal interest with the defendant. It is also denied that the plaintiff has any share with the defendant in the plaint schedule properties. In reply to the contents of Para 7 of the plaint, it is submitted that the defendant has no knowledge of debts if any incurred by the mother of the parties. It was also pleaded that Para 8 of the plaint is false. It is denied that the mother of the parties got the land in S. No. 569 from Nomula Buchaiah in exchange of her land out of S. No. 896. The ownership of mother the parties and her capacity to

alienate are disputed and the plaintiff is put to strict proof of the same. Neither the S. No. 896 nor the item No. III of the plaint "A" schedule were in possession of the mother of the parties any time. It was pleaded that the contents of Para 9 of the plaint are denied. Neither the plaintiff assisted her parents nor the mother of the parties was in possession of plaint schedule properties at any time. It was also pleaded that Para 10 of the plaint is false. Since 1964 the plaintiff is not in Ramannagudem. The remaining contents are also false and invented for the purpose of this case. The defendant further pleaded that Para 11 of the plaint is false. The question of grabbing away the suit land does not arise as the defendant is in possession and enjoyment of the plaint schedule lands since 1967 till today to the exclusion of the plaintiff. It was also further pleaded that Para 12 of the plaint is false. The plaintiff did not demand for partition on 15-11-1985 as alleged by her. The plaintiff knows pretty well about the absolute ownership and exclusive possession of the plaintiff over the plaint schedule properties. It was further pleaded that the contents of Para 13 of the plaint that the defendant determined to sell away the suit schedule lands and migrate to far place is false. It is the plaintiff who wanted to grab some land if not half in the suit lands and sell it away by harassing the defendant though she know that she is not having any right. It is denied that the plaintiff is having undivided half share. The defendant further pleaded that Para 14 of the plaint is false. The plaintiff is not entitled to any share and there was no demand for partition as alleged. The plaintiff is not entitled to file the suit for partition and separate possession for the reasons mentioned in the additional grounds of this written statement.

11. In the written statement additional grounds also had been pleaded, as hereunder:

The suit lands excepting the item No. III, IV and V of plaint "A" schedule and entire "B" schedule are the absolute properties of late Lingampally Lachaiah-the father of the parties. Lachaiah had no male issues and the plaintiff and defendant are his only daughters. The plaintiff is the elder sister of the defendant. Lachaiah gave the plaintiff in marriage to one Bandaru Narsaiah resident of Ootkooru Village of Nalgonda taluq. At the time of marriage, Lachaiah gave about 11 tulas of gold ornaments, silver ornaments of 25 tulas and cash of Rs. 500/-to the plaintiff towards her pasupukunkuma. Later Lachaiah brought one Neelam Lingaiah from Yerragudem Village and gave the defendant in marriage with him and kept the said Lingaiah as his illatom son-in-law. At the time of marriage of the defendant with Lingaiah, Lachaiah promised to give the entire immovable properties belonging him to the defendant towards her pasupukunkuma because of the above said reason. The plaintiff was also present at the time of marriage and also when the father of the parties promised to give the said properties to the defendant towards Pasupukunkuma. The plaintiff did not even raise any objection. Since the date of marriage Lachaiah, his wife Sattamma, the defendant her husband were living together, till the death of Lachaiah in 1967.

In 1958 the plaintiff divorced B. Narsaiah and married one Peda Verraiah. In

1964 the plaintiff divorced Peda Verraiah as per the custom prevailing in community of the parties. At the time of the said divorce the parents of the parties gave to the caste elder Bixam silver ornaments and cash of Rs. 160/-for the settlement of matrimonial dispute between the plaintiff and her second husband Peda Verraiah. Bixam also delivered a receipt for that. The divorce deed is filed herewith and the receipt is misplaced and could not be traced out inspite of serious search and it will be filed as soon as it is traced out. Thus the plaintiff was given jewellery and cash towards her pasupukunkuma and the defendant was given the immovable properties by the father of the parties.

In 1967 the father of the parties delivered the possession of items No. I and II of the plaint "A" schedule to the defendant in pursuance of his promise. Since then the defendant is in possession and enjoyment of item No. I and II of plaint "a" schedule (hereinafter called suit lands) till today exclusively, openly and to the knowledge of all including the plaintiff. The defendant has paid land revenue to the suit land. The land revenue payment is entered in Pauthy book which is filed herewith. The name of the defendant is recorded as the owner and possessor of the suit lands. The certified copies of the pahani patrikas for 1980-81, 1981-82 and 1982-83 and CC of Register No. 4 are filed herewith.

The plaintiff after divorcing the second husband Peda Veeraiah went elsewhere and returned after the death of Lingampally Lachiah i.e., in 1967 and demanded the defendant to give half share in the suit lands and also for a share in profits. But the defendant out rightly denied her alleged undivided share and also refused to give any share in profits, as the suit lands were given to her towards her pasupukunkuma. The defendant thus asserted her title in exclusion to that of the plaintiff. The defendant also replied that her possession over the suit lands is in capacity of absolute owner and not as co-owner with her. The plaintiff tried to enter possession forcefully but the defendant thrown her away. Few days thereafter, the plaintiff left Arvapally and her whereabouts were not known till she came to the obsequies of the mother of the parties i.e., 5-11-1985. Thus, since 1967 till 1985 i.e., for 16 years there was continuous non-participation of the profits and non-possession by the plaintiff. Thus, the plaintiff was ousted out of the suit lands in 1967. The defendant has been in continuous possession of the suit land for more than the statutory period and thus perfected his title over the suit lands. The plaintiff being out of possession of the suit land within her knowledge, the present suit is barred by limitation.

The defendant is enjoying the suit lands as her absolute properties. She also constructed a house, the item No. 5 of the plaint "A" schedule properties. The defendant also planted the fruit bearing trees mentioned in the note of item No. 2 of plaint "A" schedule lands. The defendant is supplying manures to the lands and trees, protecting the fruit bearing trees and looking after the agriculture as her absolute property. The defendant dug a well in item No. 2 of plaint "A" schedule installed a current motor by obtaining loan from S.B.H., Suryapet. She also got power connection to the well on her name and she is paying the

electricity bills. The defendant since 1967 is exclusively appropriating the income out of the suit lands without giving any share to any one including the plaintiff and Sattemma, the mother of parties.

Item No. 4 of the plaint "A" schedule properties does not belong to the mother of the parties as alleged and the plaintiff is put to the strict proof of it. The husband of the defendant has purchased it on 10-10-1962 from the original owner Karnati Ramachandraiah.

Item No. III of plaint "A" schedule properties does not belong to the mother of the parties and the plaintiff is put to strict proof of the same. The alleged exchange is denied, but it is admitted that Nomula Buchaiah is the owner and possessor of the Ac.8-04 gts., out of S. No. 896.

The movable properties mentioned in the plaint "B" schedule lands except the current motor are belonging to the husband of the defendant. The mother of the parties nor the plaintiff have any right over the said movable properties. The plaint schedule lands or suits lands referred to in this written statement are item Nos. 1 and 2 of plaint "A" schedule lands.

In spite of all these facts if the Hon'ble Court comes to the conclusion that the suit land is liable for partition, the husband of the defendant being illatom son-in-law is a necessary party to the suit. Thus the suit will be bad for non-joinder of necessary parties.

12. On the strength of the respective pleadings of the parties, the following issues were settled-

- (1) Whether items 1 and 2 of plaint "A" schedule were given as Pasupukunkuma to the defendant and she is in exclusive possession in her own rights ?
- (2) Whether item 5 of the plaint "A" schedule was constructed by the defendant ?
- (3) Whether item 4 of plaint "A" schedule belongs to the defendant's husband ?
- (4) Whether item 3 of plaint "A" schedule belongs to Nomula Buchaiah ?
- (5) Whether item 1 of plaint "B" schedule was installed by defendant with a bank loan ?
- (6) Whether the other items of plaint "B" schedule belongs to the defendant's husband ?
- (7) Whether items 3 to 5 plaint "A" schedule and plaint "B" schedule properties belonged to the mother of the parties and the parties are entitled to equal shares ?
- (8) Whether the defendant perfected her title over items 1 and 2 of plaint "A" schedule properties by adverse possession ?
- (9) Whether the defendant's husband is a necessary party to the suit ?

- (10) Whether the suit as framed is not maintainable ?
- (11) Whether the suit is barred by time ?
- (12) Whether the Court fee paid is incorrect ?
- (13) Whether the plaintiff is entitled to partition and separate possession ?
- (14) To what relief ?

13. The trial Court recorded the findings on appreciation of evidence, negated the stand taken by the defendant and ultimately decreed the suit with costs that all the properties are liable to be partitioned into "2" equal shares. The relationship between the parties is not in serious dispute. The evidence of P.W.I and also P.Ws.2, 3 and 4 is available on record, who deposed in detail about all the facts relating to the family. P.W.I specifically denied the stand taken by the defendant and had asserted that she is entitled to half-share in all the family properties. Though an attempt was made to show that item No. 4 was the separate property of the husband of the defendant, no convincing evidence was let-in in this regard. The vague statements made by the defendant witnesses had been disbelieved by the Trial Court. The evidence of P.Ws.1 to 4 is clear and categorical that these properties belonged to the family and the parties to the litigation are the only heirs to succeed to the properties and in the absence of any other acceptable evidence, the learned Judge arrived at a conclusion that both parties are entitled to equal shares. DW.1 deposed that her mother was having Arvapally Chelka to an extent of Acs. 5-00 and Ac. 1-10 gts., of wet land and had deposed about the particulars of the properties and her husband belonged to Erragudem Village and her husband was brought into the family as illatom son-in-law and her parents brought her husband as illatom son-in-law with promise that they will give Arvapally Chelka and wet land to her husband, as they had no male issues. This witness also deposed that at the time of her marriage she was 7 years old. From the date of her marriage, her husband was living with her in their village Arvapally. The plaintiff has no right over item Nos. 1, 2 and 5 of the plaint schedule properties. There is a current motor fixed in the well of Arvapally Chelka. The said agricultural well situated at Arvapally Chelka was dug by her husband. Her husband purchased the electric motor by obtaining loan from L.M.B. Bank. The double bullock cart was taken away by the plaintiff. The livestock mentioned in "B" schedule was not alive. There is custom in their community to adopt illatom son-in-law's in their family. Pleadings are different with that of her evidence. It is mentioned in the written statement that item Nos. 1 and 2 were given to her towards Pasupukunkuma, at the time of her marriage. In the year 1967 her father delivered the possession of item Nos. 1 and 2 of the plaint schedule to the defendant in pursuance of his promise. Since then she is in possession and enjoyment of the item Nos. 1 and 2 of plaint "A" schedule till today exclusively, openly and to the knowledge of all including the plaintiff and the defendant has paid land revenue to the suit land. It is pertinent to note that no documents evidencing possession had been marked to substantiate the stand

taken by the defendant. No doubt, certain documents are filed by way of additional evidence before this Court. DW.2 deposed about certain particulars of the family and also deposed that the husband of the defendant is illatom son-in-law. D.W.3 deposed that item Nos. 1 and 2 of the suit schedule property are in possession of Neelam Lingaiah i.e., the husband of defendant for the last 40 years. At first item No. 2 of the plaint schedule property was dry land, the husband of defendant made it as a garden about 20 or 25 years back. He has no lands nearby side of item Nos. 1 and 2 according to him he has seen that the husband of defendant was in possession and enjoyment of item Nos. 1 and 2. According to the witness the item Nos. 1 and 4 in possession of N. Lingaiah, husband of DW. 1 for the last 40 years. The evidence of D.W.4 is general in nature. P.W.1 was supported by P.W.2 and also P.W.3, a common relative, who deposed about the family and also the panchayat held by the parties for settlement of shares and elders advised both the parties to take half share each and the defendant was not accepted for the said proposal. P.W.4 also deposed about the affairs of the family and how the family got these properties and how the parties are entitled to the shares. On appreciation of this evidence available on record, inasmuch as the defendant was unable to substantiate any of the contentions the plaint schedule properties were held to be the family properties and the suit was decreed with costs. In the light of the findings recorded in detail by the learned Judge, this Court is of the considered opinion that the said findings need not be disturbed in any way.

14. Point No. 4 : No doubt, there is evidence of D.Ws. 1 and 2 on this aspect. D.W.2, no doubt, deposed that the husband of defendant is the illatom son-in-law. But, there is an admission on the part of DW.2 that he is not having good terms with the plaintiff and her sons. The evidence of DW.1 on this aspect is only interested testimony. These aspects were specifically denied by P.W.I. The concept of illatom adoption, which is a customary mode of adoption, no doubt, is recognized only in certain castes and it is needless to say that this customary mode of adoption may have to be clearly established. The details relating to the customary mode of adoption had not been pleaded clearly. On the aspect of illatom son-in-law and the proof relating to the customary mode of adoption, reliance was placed on Subbarao v. Mahalakshamma AIR 1930 Mad. 883 ; (Mullapudi) Rangayya Vs. Emperor, ; Narasayya and Ors. v. Ramachandrayya and Ors. AIR 1956 AP 209 and Narkulla Venkayya and Another Vs. Noona Satyanarayana and Another, . The principles relating to the customary mode of illatom adoption and the standard of proof required thereof is well-settled and in the light of the nature of pleadings and the nature of evidence available on record, this Court is of the considered opinion that the trial Court is well justified in negating the said stand and decreeing the suit giving equal shares to both the daughters and hence, the said findings are hereby confirmed.

15. Point No. 5 : The appellant-defendant herein filed the following documents in C.M.P. No. 18112/2000:

Sl. No. Year of document Description of the document Remarks

1. 1958 Pavathi Bahi (Suryapet Tahsil) Signifies the payment of Kist and particulars 2. ---- Pattadar Pass Book issued by the Tahsildar Thungatuiti

3. 1956 Pavathi Bahi

4. 1981 Pahanies issued by the MRO 1981-82 Arvapalli From 1981 to 1988
1982-83 1983-84 1984-85 1985-86 1986-87 1987-88

5. 1969-70 Pahanies issued by the MRO, 1970-71 Aravapalli 1971-72 1972-73
1973-74 1974-75 1975-76 1976-77 1977-78 1978-79 1979-80

As can be seen from these documents, these are all documents which were available during the pendency of litigation before the trial Court and despite the same, these documents were not produced before the trial Court and to substantiate the plea of either ouster or adverse possession, the appellant-defendant intends to rely on these documents. Order XLI Rule 27 C.P.C. reads as hereunder-

Production of additional evidence in Appellate Court :-(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

It is needless to say that the conditions specified in the above provisions are not satisfied in the present case. Strong reliance was placed on Jayaramdas and Sons Vs. Mirza Rafatullah Baig and Others, and State of Rajasthan v. T.N. Sahani and Ors., (2001) 10 SCC 619 . In the facts and circumstances of the case, this Court is of the considered opinion that these documents cannot be permitted at the appellate stage since none of the conditions specified under Order XLI Rule 27 C.P.C., have been satisfied in the present case and accordingly, C.M.P. No. 18112/2000 is hereby dismissed.

16. Point No. 6 : In the light of the foregoing discussion, the parties to the suit i.e., the plaintiff and defendant, are entitled to equal shares in all the plaint schedule properties and accordingly a preliminary decree is granted for partition to the effect that both the plaintiff and defendant are entitled to equal shares in all the plaint schedule properties and are entitled for division of the properties into "2" equal shares taking the good and bad qualities into consideration. The trial Court was well justified in decreeing the suit as prayed for and hence, the appeal is accordingly dismissed. C.M.P. No. 18112/2000 for reception of additional evidence is also hereby dismissed. However, since the parties are blood sisters, this Court makes no order as to costs in this appeal.