

(1999) 01 AP CK 0036
In the Andhra Pradesh High Court
Case No : SA No. 190 of 1990

Neerukathu Ankamma (died) by his LRs.	APPELLANT
Vs	
Yadagimathum Nagaraju	RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1)(2)

Citation : (1999) 2 ALD 544 : (1999) 2 ALT 667 : (1999) 1 APLJ 334

Hon'ble Judges : A. Hanumanthu, J

Bench : Single Bench

Advocate : Mr. P. Nagaraja Rao, for the Appellant; Mr. C. Sadasiva Rao, for the Respondent

Judgement

1. This is a defendants' appeal against the reversing Judgment of the lower appellate Court i.e., Subordinate Judge, Nandyal, in AS No.28 of 1983 dated 22-1-1990.
2. For the sake of convenience, the parties are being referred herein as they are arrayed in the suit OS No.444 of 1980 on the file of the Principal District Munsif, Nandyal in Kurnool District.
3. The respondent-plaintiff filed the said suit seeking the reliefs of (i) declaration of plaintiff's title to the suit site; (ii) for permanent injunction restraining the defendants and their men from trespassing into the suit site and making any constructions thereon or in any manner interfering with the plaintiff's peaceful possession and enjoyment of the said site; and (iii) for mandatory injunction directing the defendants to remove the walls and other super structure made on the suit site.
4. The suit site consists of the open site marked as A, B, C, D, and X in the plaint plan situated in Panyam village within specific boundaries and it is an house site. As per the averments in the plaint the suit site is the ancestral property of the plaintiff and his father. There used to be a dilapidated house previously on the

said site and it fell down in due course of time and the said site is now lying vacant. The plaintiff and his father (PW2) divided their joint family properties under a registered partition deed dated 8-10-1979 (Ex.A1) and in the said partition the suit site along with other properties fell to the share of the plaintiff. Thus the plaintiff became the absolute owner and possessor of the suit site. Alleging that about ten days prior to the filing of the suit, during the absence of the plaintiff from the village, the defendants high-handedly trespassed into the suit site and raised some constructions on the suit site, the plaintiff filed the said suit for the reliefs stated supra.

5. The first defendant is the father and the defendants 2 and 3 are his sons. During the pendency of the suit, the first defendant died and his wife has been brought on record as his legal representative. The case of the defendants as put-forth in their written statement is that the plaint plan is incorrect; that it does not show the correct topographical features of the subject matter of the dispute; that the disputed site is not the ancestral property of the plaintiff; that X marked site is the mutts property and is meant for public at large. The rest of the disputed site belongs to the defendants. Originally on the suit site there existed a house for the residence of one Uppara Nagamma who was the paternal grandmother of the defendants 2 and 3. She used to reside in that house. It was also assessed in the name of Uppara Nagamma and its door number was 12/60. She died about 18 years ago. After her death, the defendants have been in possession and enjoyment of the said house and they were using it for their sundry purposes. As the house has become very old, the defendants obtained permission from the Panchayat for constructing a new house in place of that old house. They also obtained permission for construction of the house. The plaintiff who is jealous of the prosperity of the defendants filed the said suit with false allegations. The defendants have also pleaded that they have been in possession and enjoyment of the old house and the suit site since 1962 exclusively and as such they have perfected their title by adverse possession.

6. Based on those pleadings, the trial Court settled the relevant issues for trial. PWs.1 to 3 were examined and Exs.A1 to A3 were marked on behalf of the plaintiff and DWs.1 and 2 were examined and Exs.B1 to B6 were marked on behalf of the defendants. The plaintiff got himself examined as PW1. PW2 is the father of the plaintiff. PW3 is a villager and adjacent house owner and he deposed that the plaintiff has been in possession and enjoyment of the suit site. The third defendant got himself examined as DW1 and a neighbour of the suit site was examined as DW2 and he deposed that the suit site has been in possession and enjoyment of the defendants. Ex.A1 is the registered partition deed dated 8-10-1979 between the plaintiff and his father. Ex.A2 is the certified copy of the decree in OS No.515 of 1929 dated 30-9-1930 on the file of the District Munsif, Nandyal. Ex.A3 is the house tax receipt dated 8-9-1969. Exs.B1 to B4 are the house tax demand notices and house tax receipts which stand in the name of Nagamma. Ex.B5 is the approved plan dated 3-4-1980 and Ex.B6 is the licence granted to the defendants for construction of the house.

7. On a careful consideration of the oral and documentary evidence placed before it, the trial Court held that the plaintiff failed to establish that he is the absolute owner of the suit site and that he is in possession and enjoyment of the same. The trial Court also held that the defendants have also perfected their title by adverse possession. Hence, the plaintiff's suit was dismissed with costs.

8. Aggrieved of that decree and Judgment of the trial Court, the plaintiff preferred the appeal AS No.28 of 1983 to the Court of Subordinate Judge, Nandyal. Before the lower appellate Court an unregistered rent deed dated 30-6-1968 said to have been executed by the second defendant in favour of the plaintiff's father (PW2) was marked as additional evidence on behalf of the plaintiff. On a re-appraisal of the evidence on record, the lower appellate Court reversed the findings of the trial Court and decreed the suit of the plaintiff as prayed for.

9. Challenging the said findings of the lower appellate Court, the defendants have come up with this second appeal.

10. Heard the learned Counsel on either side. The learned Counsel for the appellants took me through the impugned Judgment of the lower appellate Court as well as that of the trial Court and also the oral and documentary evidence on record.

11. The learned Counsel for the appellants raised the following contentions :

(i) Uppara Nagamma who was a Hindu widow was given the suit site along with the house thereon towards her maintenance prior to the passing of the Hindu Succession Act, 1956 and by virtue of the provisions u/s 14(1) of the Hindu Succession Act, 1956, the life estate of Nagamma gets enlarged into an absolute right and subsequent to her death in or about 1962 the defendants who are her legal heirs have succeeded to the suit site and the plaintiff is not entitled to get back the suit property even under the compromise decree under Ex.A2;

(ii) The plaintiff failed to establish that himself or his father took possession of the suit site subsequent to the death of Nagamma in the year 1962 and that the suit property continued to be in possession and enjoyment of the defendants who succeeded to the estate of Nagamma and that the defendants have perfected their title to the suit property by adverse possession ;

(iii) The defendants have started construction of a new house on the suit site after obtaining permission and licence from the Gram Panchayat and thus the plaintiff was not in possession and enjoyment of the suit site on the date of filing of the suit;

(iv) The lower appellate Court committed error in admitting Ex.A4 as additional evidence as its execution has not been proved and as there is no pleading in the plaint that the suit property was leased out to the second defendant and that the second defendant had executed a lease deed in favour of PW2;

12. The learned Counsel for the respondent-plaintiff, on the other hand, submitted that the suit property was given to Nagamma towards her maintenance under the compromise decree (Ex.A2) in OS No.515 of 1929 dated 30-9-1930 and, therefore, her limited rights do not get enlarged as absolute rights by virtue of sub-section (2) of Section 14 of the Hindu Succession Act, 1956. He further submitted that the plaintiff's father (PW2) took possession of the suit property subsequent to the death of Nagamma and he has leased it out to the second defendant and others after taking over possession of the same and that in family partition the suit property fell to the share of the plaintiff under Ex.A1.

13. The substantial questions of law involved are :

(i) Whether the limited right of Nagamma over the suit property got enlarged into absolute right under sub-section (1) of Section 14 of the Hindu Succession Act, 1956 and thus the plaintiff or his father (PW2) have no right to get back the said property as per the terms of the compromise in the decree in OS No. 515 of 1929?

(ii) Whether the defendants have perfected their title by adverse possession ?

14. Question No. 1 : The plaintiff has not specifically pleaded in the plaint that how his family got the suit property. It is simply averred in the plaint that the suit site is ancestral property of the plaintiff family and that it has fallen to the share of the plaintiff in the family partition with his father (PW2) in the year 1979. The plaintiff also produced the registered partition deed (Ex.A1) dated 8-10-1979. But in their evidence the plaintiff as PW1 and his father as PW2 traced their title to the suit site under the terms of compromise decree (Ex.A2) passed in OS No.515 of 1929 dated 30-9-1930. It is in their evidence that Chinna Nagalingaiah the father of PW2 and his minor sons filed the suit OS No.515 of 1929 against his brother-Pedda Nagalingaiah and his alignees with respect to the suit property and other properties and that suit ended in compromise and the compromise decree was passed and Ex.A2 is the certified copy of the compromise decree and as per the terms of the compromise Uppara Nagamma-the sister-in-law of the defendant No.7 in that suit was given life interest in the house which existed on the suit site and that subsequent to her death the said house should revert back to the plaintiffs in that suit. It is also in their evidence that subsequent to the death of Nagamma, PW2 got back the house on the suit site which was in her possession and that the same fell to the share of the plaintiff under Ex.A1. Except the oral and interested testimony of PWs.1 and 2, there is nothing on record to show that the suit house had reverted back to the plaintiff and his father subsequent to the death of Nagamma. As seen from Ex.A2, the suit OS No.515 of 1929 was filed to set aside the alienations made by Malam Pedda Nagalingaiah the senior paternal uncle of PW2 with respect to some of the joint family properties including the suit property purchased by Uppara Madugalli Venkatanna the seventh defendant in that suit. PW2 was a minor and he was third plaintiff in that suit. It is also noted in Ex.A2 that Uppara Nagamma

was no other than the wife of the elder brother of the defendant No.7 in that suit. By virtue of purchase of the suit house by D7 in that suit, it had become the family property of D7 and Uppara Nagamma who was the widow of this elder brother. Being the widow of D7's elder brother, Nagamma had a legal right for maintenance and it was towards her maintenance rights in family properties the suit house was allotted to the said Uppara Nagamma and the same was recorded in the compromise decree-Ex.A2. It is also averred in the compromise decree that the said Uppara Nagamma will have limited rights to enjoy the said house during her life time and after her death it should revert back to the plaintiffs in that suit.

15. The next aspect to be considered is whether the limited rights of enjoyment for life recognised under Ex.A2 gets enlarged by virtue of sub-section (1) of Section 14 of the Hindu Succession Act, 1956, as contended by the learned Counsel for the appellants-defendants, or whether it does not extend into absolute right by virtue of sub-section (2) of Section 14 of the Hindu Succession Act, 1956, as contended by the learned Counsel for the respondent-plaintiff. It would be convenient at this stage to set out both subsections of that Section, which read as follows :

""Sec/ion 14 : (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation : -- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, Will or other instrument or the decree, order or award prescribe a restricted estate in such property."

According to sub-section (1), any property possessed by a female shall be held by her as full owner thereof and not as a limited owner irrespective of the fact whether the said property was acquired by her before the commencement of the Act or after the commencement of the Act. Explanation to sub-section (i) elaborates the meaning and content of expression "property" in subsection (1). It includes the property given in lieu of maintenance. Sub-section (2) of Section 14 is more in the nature of a proviso or exception to sub-section (1) of Section 14. The respective scope and ambit of subsections (1) and (2) has been the subject matter of number of decisions of the Supreme Court, the most important of

which is the decisions in *Vadde Boina Tulasamnui and others v. Vadde Boina Seshareddi (dead)* by LRs. AIR 1977 SC 1944. The principles enunciated in this decision have been reiterated in a number of decisions later but have never been departed from. The question that rose for determination before the Three Judges Bench of the Supreme Court headed by Justice P.N. Bhagawathi in that appeal was as to whether it is subsection (1) or sub-section (2) of Section 14 of the Hindu Succession Act, 1956, that applies where the property is given to Hindu female in lieu of maintenance under an instrument which in so many terms restricts the nature of interest given to her in the property and if sub-section (1) applies, then the limitations on the nature of her interest are wiped out and that she becomes full owner of the property while, on the other hand, if sub-section (2) governs such a case her limited interest in the property is not enlarged and she continues to have restricted estate prescribed by an instrument. Their Lordships have laid down that where the property is acquired by a Hindu female in lieu of right of maintenance inter alia, it is in virtue of preexisting rights and such an acquisition would not be within the scope and ambit of subsection (2) even if the instrument, decree, order or award allotting the property to her prescribed a restricted estate in the property. It is also held in this decision that sub-section (2) is confined to cases where the property is acquired by a Hindu female for the first time as a grant without any pre-existing right under a gift, Will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property.

16. In *Bai Vajia (Dead) by Lrs. Vs. Thakorbbhai Chelabhai and Others*, , another three Judges Bench of the Supreme Court relying on the decision in AIR 1977 SC 1944 (supra) observed that the claim to maintenance, as also the right to claim property in order to maintain herself in an inherent right conferred by the Hindu Law and, therefore, any property given to her in lieu of maintenance is merely in recognition of the claim or with which the widow possessed before and it cannot be said that such a right has been conferred on her for the first time by virtue of the document concerned and before the existence of the document the widow had no vestige of a claim or right at all.

17. In *Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others*, , a right to reside in a house property was held by the Supreme Court to attract subsection (1) of Section 14 notwithstanding the fact that the grant expressly conferred only a limited estate upon her. In *Nazar Singh and others Vs. Jagjit Kaur and others*, , the Supreme Court also took the same view and held that property given to female Hindu in lieu of her maintenance by way of compromise and she continued in possession and enjoyment thereof from the date of compromise the provisions of Section 14(1) nor Section 14(2) are attracted and that she became absolute owner irrespective of several restrictions.

18. In the instant case, admittedly, the house that was in possession of Nagamma belonged to the joint family of her husband and his brother who is the defendant No.7 in OS No.515 of 1929 as it was purchased from Pedda

Nagalingaiah-the senior paternal uncle of PW2 herein. Being the widow, she was entitled for the maintenance and she was given possession of the suit house in lieu of her maintenance in the joint family property. In the suit filed for setting aside the sale with respect to that property in OS No.515 of 1929 a compromise was effected and compromise was recorded and her right to remain in possession in the suit house in lieu of her maintenance was recognised. Therefore, the right of Nagamma to continue in possession of that property in lieu of her maintenance was simply recorded under the compromise decree, Ex.A2. It is not for the first time such a right of maintenance has been conferred on Nagamma under Ex.A2. It is an recognition of her maintenance right the suit house was given to her. Thus, the principle enunciated in AIR 1977 SC 1944 is very much applicable to the facts in this case. Nagamma's right to maintenance was a pre-existing right and it was in recognition of such a right that she obtained the suit house and the same was recorded under the compromise decree and, therefore, the compromise did not fall within the ambit of sub-section (2) of Section 14 of the Hindu Succession Act, 1956 but it attracts the provisions of sub-section (1) thereof coupled with the explanation thereto.

19. The learned Counsel for the respondent-plaintiff relied on the decision in Kalawatibai Vs. Soiryabai and others, . That has no application to the facts in this case. In that case it was held that an alignee even if she s a female Hindu from a limited owner is not entitled for the benefit of enlargement of limited estate into absolute right u/s 14 of the Hindu Succession Act, 1956 and alignee does not become limited owner.

20. Under the facts and circumstances in this case, the plaintiff or his father are not entitled to revisionary rights under the compromise decree (Ex.A2). By virtue of the provisions under sub-section (1) of Section 14 of the Act, the life estate created in favour of Nagamma transformed into full ownership rights and the plaintiff does not get any tide to the suit property as he is not a legal heir of the said Nagamma.

21. Question No.2 : It is not disputed that the defendants 2 and 3 are the legal heirs of the deceased Nagamma. It is their case that subsequent to the death of Nagamma, they are in possession and enjoyment of the suit property as her heirs and that the plaintiff or his father never took back delivery of the suit property under the compromise decree, Ex.A2, and they were never in possession and enjoyment of the suit property subsequent to the death of Nagamma. As earlier stated, the plaintiff failed miserably to establish his possession over the suit property within the statutory period of twelve years prior to the filing of the suit. The claim of the plaintiff that it was leased out to D2 and some others after the death of Nagamma is only an after thought. There is no pleading to that effect. PW3 also failed to mention the name of the tenant to whom the suit house was said to have been leased out. Ex.A4 which is said to have been executed by D2 in favour of the plaintiff's father (PW2) as a rent deed is also not proved. There is no pleading in the plaint that the suit property was

let out to the second defendant and that he executed a rent deed as that of Ex.A4. The existence of Ex.A4 was not spoken to either by the plaintiff as PW1 or his father as PW2. Moreover, Ex.A4 was filed at the lower appellate stage and it was admitted by the lower appellate Judge even in the absence of proof of the document. The learned lower appellate Judge committed an error in admitting such a document without proof of its execution and relying on the same. There was no opportunity for the second defendant to deny the same as it was admitted in the lower appellate stage. Further, the signature of the executant in Ex.A4 do not tally with the admitted signatures of the second defendant found in his written statement filed in the suit. Further, the documents filed on behalf of the defendants prove the possession of the defendants with respect to the suit property. Further, it has come in evidence that the defendants applied for permission for construction of house over the suit site and, as seen from Exs.B5 and B6, the Gram Panchayat had sanctioned permission for construction of the house. These documents go to show that the defendants were in possession and enjoyment of the same on the date of filing of the suit and as such the plaintiff is not entitled for injunction as prayed for. Ex.A1 the registered partition deed in between the plaintiff and his father (PW2) also does not in anyway help the plaintiff's case. Further, it is only a self-serving document brought into existence between the plaintiff and his father. The date or year in which Nagamma died is not mentioned in the plaint. On the other hand, it is suggested to DW1 in his cross examination that Nagamma died in the year 1967. DW1 categorically stated in examination-in-chief that Nagamma died about more than 20 years ago. Since the time of death of Nagamma the defendants succeeded to the suit property as legal heirs of Nagamma and they continued to be in possession and enjoyment of the same adverse to the interests of the plaintiff and his father. As such, I have no hesitation to hold that the defendants have perfected their title by adverse possession to the suit site.

22. In the light of my above discussion, I hold that the plaintiff failed establish his title to the suit property and the defendants have perfected their title to the suit property by adverse possession. Hence, the plaintiff is not entitled for the reliefs as prayed for in his suit and the appeal is liable to be allowed.

23. In the result, the appeal is allowed with costs. The Judgment and decree in AS No.28 of 1983 under appeal are set aside. The Judgment and decree of the rial Court in OS No.444 of 1980 dismissing the plaintiff's suit is restored.