

(2004) 07 AP CK 0017
In the Andhra Pradesh High Court
Case No : AS No. 1556 of 1989

P. Jayaramaiah

APPELLANT

Vs

Aragonda Munemma and Others

RESPONDENT

Date of Decision : 09-07-2004

Acts Referred:

Evidence Act, 1872 — Section 114

Hindu Succession Act, 1956 — Section 18, 3

Citation : AIR 2005 AP 26 : (2004) 5 ALD 489 : (2004) 6 ALT 87

Hon'ble Judges : Gopala Krishna Tamada, J; Bilal Nazki, J

Bench : Division Bench

Advocate : S.V. Muni Reddy, for the Appellant; P.V. Sanjaya Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—The appellant-plaintiff filed a suit being O.S. No. 15 of 1977, seeking a declaration that he was entitled to half share in Plaint A and B-Schedule properties by virtue of gift deeds executed by the 1st defendant. In the alternative, he sought a declaration that he was entitled to half share in the said property as Class-I heir of deceased Rajappa under Hindu Succession Act. He also sought possession of his share.

2. Plaintiff contended that one Ellappa had three sons; Munuswamy, Papaiah and Rajappa. Ellappa had two wives. Papaiah and Rajappa were sons of first wife whereas Munuswamy was the son of second wife. Munuswamy, the first wife's son was not being treated properly by his stepmother, therefore he separated from the family, which was a joint family till then. Ellappa and his two other sons Papaiah and Rajappa continued to live together. Plaintiff is the son of Munuswamy. Ellappa died in the year 1938. After his death, Papaiah and Rajappa continued to live as members of the joint family, possessing and enjoying the schedule properties. 2nd defendant is the daughter of Papaiah as he had no sons. His wife pre-deceased him. He died in 1951. By then, the 2nd defendant

was married and was living with her husband. After the death of Papaiah, his brother Rajappa succeeded to the entire property belonging to Papaiah and Rajappa. Rajappa also died issueless on 6.5.1975, leaving behind him his widow the 1st defendant. She being the only heir to the property of Rajappa and Papaiah, succeeded to all the plaint schedule properties. 1st defendant was in possession and enjoyment of the property. 1st defendant's husband Rajappa, who died 15 years before filing of the suit, had managed the suit schedule properties.

3. The Defendant No. 1, due to her love and affection towards the plaintiff, executed two gift deeds dated 6.2.1976 and 13.2.1976, settling her undivided half share in all the plaint schedule properties. The plaintiff was employed as Police Constable. He let out the buildings to the tenants. The 1st defendant was in possession of a portion of Item No. 1 of the plaint schedule. The 2nd defendant, who had absolutely no right, attempted to disturb his possession. The plaintiff issued a notice on 1.3.1976 to 2nd defendant. She acknowledged the notice, but did not reply. 2nd defendant gave a notice to the plaintiff on 25.2.1976 with some false allegations. She claimed that 1st defendant was not the wife of Rajappa and she continued to be in possession of plaint schedule properties left by Rajappa and the 1st defendant was not entitled to execute any gift deeds. The plaintiff also came to know that the 2nd defendant was not entitled to execute any gift deeds. The plaintiff also came to know that the 2nd defendant created a nominal mortgage over some of the plaint schedule properties in favour of the 3rd defendant.

4. Defendant No. 1 in her written statement, admitted execution of two gift settlement deeds in favour of plaintiff. She also admitted that she put the plaintiff in possession of the portion of the property. The remaining extent was in her possession. She claimed, she was widow of Rajappa, having married him 35 years before. She had been living with him as his wife till he died in 1975. She was recognized as widow of Rajappa and she received the provident fund and other benefits which were due to Rajappa on his death. 2nd defendant was the daughter of her husband's elder brother Papaiah, who died in 1951. 2nd defendant was married and was living with her husband. Her husband Rajappa succeeded to the entire properties and was in possession and enjoyment till his death. After his death, she succeeded to the properties. Defendant No. 2 has no right or share in the properties and also had no right to deal with the properties. She had no objection if the decree as prayed for by the plaintiff was granted.

5. During the pendency of the suit, the 1st defendant died and the plaintiff was declared as legal representative of the 1st defendant by the order of the Court in I.A.No. 775 of 1982.

6. The 2nd defendant in her written statement, admitted that Ellappa had three sons and plaintiffs father had left the joint family by taking away his share in the joint family properties. Papaiah and Rajappa continued to live jointly. Papaiah was a school teacher while Rajappa was a Forest Guard. After the death of

Ellappa, Papaiah and Rajappa, with their efforts and skills, acquired the plaint schedule lands. 2nd defendant is the daughter of Papaiah. She died in or about 1956. After the death of Papaiah and Rajappa, he never used to visit Chandragiri or Chanambatla, where suit lands are situated, because of his job as Forest Guard and 2nd defendant alone had been enjoying the properties with the assistance of her husband. The 2nd defendant alone effected all improvements to the properties which were in his exclusive possession and enjoyment.

7. Rajappa died in 1975. She denied that the 1st defendant was the wife of Rajappa and she was ever in possession of suit properties. Rajamma was not legally wedded wife of Rajappa. 1st defendant was one time concubine of Rajappa and could not succeed the properties of Rajappa, being a concubine. Defendant No. 1 was the legally wedded wife of one Chakala Chinna Dora, a resident of Irakambatla Village in Gudiyatam Taluq of North Arcot District of Tamilnadu. After his death, the 1st defendant developed illicit intimacy with Rajappa and came to live with him as a concubine. 1st defendant lived for some time as concubine of Rajappa and due to some differences, she left him. Then Rajappa was under the care and protection of the 2nd defendant till his death. She performed the obsequies of Rajappa and spent Rs. 1,000/-. 1st defendant had no right, title, possession or the interest in the suit properties, so she could not convey it in favour of plaintiff. Plaintiff never let out the building on his behalf or on behalf of the 1st defendant. Defendant No. 3 adopted the written statement filed by Defendant No. 2 and Defendants No. 4 and 5 did not file any written statement.

8. Following issues were settled for trial by the Trial Court:

1. "Whether the 1st defendant is not the legally wedded wife of late Rajappa, the son of Ellappa ?
2. Whether the suit properties devolved upon the 1st defendant after the death of the said Rajappa ?
3. Whether the 2nd defendant is the only legal heir to succeed to the properties of late Rajappa ?
4. Whether the gift deeds dated 6-2-1976 and 13-2-1976, executed by the 1st defendant in favour of the plaintiff are true, valid and binding on the Defendants 2 and 3 ?
5. Whether the plaintiff is entitled to half share in the suit properties as a legal heir to late Rajappa alternatively ?
6. Whether the 1st defendant perfected her title to the suit properties even otherwise by adverse possession ?
7. Whether the 2nd defendant perfected her title to the suit properties by adverse possession ?
8. Whether the mortgage deed executed by the 2nd defendant in favour of the

3rd defendant is true, valid and binding on the plaintiff and 1st defendant ?

9. Whether the plaintiff and 1st defendant are entitled to half share each in the suit properties ?

10. Whether the suit as framed is not maintainable ?

11. To what relief ?"

9. The suit was dismissed. Now, two questions are raised before this Court in appeal, by the appellant-plaintiff. One is whether the gift deeds executed by the 1st defendant were valid and whether she had any right in the property and whether she was the wife of Rajappa ? The second question in the alternative is, whether the plaintiff, as heir to Rajappa and Papaiah, could have half share in the property along with Defendant No. 2 ? The answer to the 1st question would lie in the evidence lead by the parties.

10. Plaintiff examined himself as PW-1 and two other witnesses and marked Exs.A1 to A-23. 2nd defendant examined herself as DW-1 and examined two other witnesses and marked Exs.B-1 to B-30. The plaintiff in his examination, stated that after the death of Rajappa, 1st defendant was in possession and enjoyment of the property as his heir. 1st defendant gifted her property on 6.2.1976 to him under Ex.A-6, which relates to Plaintiff B-Schedule properties. On 13.2.1976, she conveyed Plaintiff A-Schedule properties to him under Ex.A-7. The 1st defendant conveyed him half share in the properties described therein. The 1st defendant was the legally married wife of Rajappa. He had attended the marriage. The 1st defendant had given him two photo frames. These photos were marked subject to the objection by other side. The photographs were taken by Defendant No. 1 and Rajappa for the purpose of claiming pension. Exs.A-8 and A-9 are the photographs, showing the 1st defendant and her husband together. He helped the 1st defendant to get the legal heir certificate from Taluq Office, Chandragiri, mentioning that 1st defendant was the wife of Rajappa. On the basis of legal heir certificate, she claimed arrears of pay and pension from the Government. Ex.A-10 is the legal heir certificate. 1st defendant was receiving pension after the death of her husband. She received pension till her death. Ex.A-11 was the pension payment order, describing her as the wife of Rajappa, The 1st defendant was living with the plaintiff prior to her death. She gave the relevant records to him. He filed I.A. No. 775 of 1982, praying to recognize him as the legal representative of Defendant No. 1. The pension was allowed on 13.10.1982. A-Schedule property was mortgaged in favour of 3rd defendant by the 2nd defendant in the year 1975. Ex.A-12 was the Registration copy of the mortgage deed. After the suit, the 2nd defendant transferred portion of B-Schedule property to the 4th defendant under the original of Ex.A-13. The death of Papaiah in the year 1951 was not recorded in the Taluq Office. He obtained the certificate to the effect that there was no entry about his death during the years 1951-56, which was Ex.A-15. He performed the obsequies of Rajappa and also of the 1st defendant. His father separated from the joint family prior to 1931. He

has another younger brother. His father was given a site to build a house and a cash of Rs. 50/- when he separated. Subsequently in the division between himself and his brother, that site was allotted to his brother, who has sold it to one Lakshmamma of Chandragiri Village. There is no record with him to show the year of death of 2nd defendant's father. It is not true to say that the 2nd defendant's father died on 9.7.1956. Rajamma was native of Batharapalle Village of Gudiyatham Taluq in North Arcot District. It was not true that she was married to Chinna Dorai. In 1938, the marriage of 1st defendant took place with Rajappa in Chandragiri. He could not mention the names of persons who attended the 1st defendant's marriage. He could not give the names of pipers. About 20 persons from Defendant No. 1's native village attended the marriage function. He did not enquire after Defendant No. 1 filed written statement in the suit, about her marriage from anybody. He denied the suggestion that Rajappa developed illegal intimacy with 1st defendant after the death of her husband.

11. PW-2 claims to be neighbor of Rajappa and Papaiah, He stated that Rajappa was married to Defendant No. 1 about 50 years back. The witness was then a child of 10 or 15 years. They had no children. They fostered plaintiff, brought him up and educated him and got him a job. In the cross-examination, he accepted that he did not attend the marriage of 1st defendant with Rajappa. He stated that Rajappa and Defendant No. 1 and plaintiff lived in his house as tenants for three years. Rajappa and Defendant No. 1 had no children and they fostered the plaintiff as a son. In the cross-examination, he stated that he does not know even the native place of plaintiff. He was now residing in Chittoor. There was no lease deed executed when Rajamma-1st defendant lived in his house. He was an illiterate.

12. This is the total evidence with regard to the marriage of 1st defendant with Rajappa. It is true that there is a presumption of marriage if a man and woman lived together for substantially long period of time, but there is no evidence even from PWs. 1 to 3 that Rajappa and the 1st defendant lived together for a long period of time. The evidence that the Defendant No. 2 was drawing the pension of Rajappa and also was able to receive the pensionary benefits of Rajappa, is based on a succession certificate. This succession certificate was obtained from the Revenue authorities. This succession certificate cannot be conclusive proof of marriage of Rajappa with Defendant No. 1, particularly in view of the fact that it was shown that she belonged to a village in Tamilnadu and was a registered voter as wife of somebody else. The 2nd defendant stated in her statement that Defendant No. 1 left Rajappa and went away after staying for 1 1/2 years at Chandragiri with Rajappa. She also stated that after retirement, Rajappa stayed with her at Chandragiri in his house and she was looking after him. She used to cook food for him. She filed house tax receipts, showing that the house at Chandragiri was in her name. They were exhibited as Exs.B-1 to B-7. The death certificate showing the date of death of her father, was Ex.B-8. She also filed land revenue receipts in Exs.B-10 to B-13. Rajamma had also taken some loans and the instalments were repaid by her. The receipts were Exs.B-14 to B-22. She

went to the village of Defendant No. 1 and obtained a certificate. The voters list of Bathalapalli Village of Tamilnadu in Tamil, is Ex.B-25 and at Serial No. 597, it is noted in Tamil that one Rajammal, wife of Chinnadorai was a voter, which was Ex.B-26. The certificate given by the Revenue Inspector of Pernambattu North Arcot District stating that Rajammal wife of Chinnadorai died on 25.3.1982, was Ex.B-27. Ex.B-28 was the certificate issued by K.M. of Bathalapally and Ex.B-29 was the certificate issued by V.M. of Bathalapally to the effect that Rajammal was the wife of Chinnadorai.

13. According to the plaintiff, the marriage of Rajappa took place with the 1st defendant, 38 years before. There is no witness produced, who witnessed the marriage. The photographs produced before the Court were not taken into consideration by the Trial Court for valid reasons. There were no negatives and even if these photographs had been proved, even then, it would not prove anything, besides proving that the photographs were taken when Rajappa and Defendant No. 1 were together. That would not create a presumption of marriage. There is no evidence to show as to how long they lived together. On the other hand, the defendants have proved that Defendant No. 2 was the wife of one Chinnadorai of Madras and her name was recorded in 1975 voters' list. We do not have even the date on which her first husband died. Defendant No. 1 could not be put to cross-examination because she died during the pendency of the suit. The law is settled that if a man and woman lived together for long years as husband and wife, then a presumption would arise in law of legality of marriage between the two. But basically, this presumption is rebuttable. In this case, the judgment of Hon'ble Supreme Court in Gokal Chand v. Parvin Kumari, AIR 1952 SC 231, has consistently been followed. The law laid down by the Supreme Court in this case was, "Continuous cohabitation for a number of years may raise the presumption of marriage But the presumption which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy that presumption, the Court cannot ignore them." In order to appreciate the controversy before us in the right context, we are reproducing para 10 of that judgment hereunder:

"10. As to the evidence of the 4 persons who claim to have been present at the plaintiffs marriage, we find ourselves in agreement with the view taken by the High Court. The evidence of the other witnesses undoubtedly establishes the fact that for some years the plaintiff and Ram Piari lived together as husband and wife and were treated as such, that Paras Ram, brother of Ram Piari, addressed the plaintiff as "jija" (a common name for sister's husband), and that the plaintiff acted as Paras Ram's guardian when the latter was admitted to D.A.V. School and was described as his brother-in-law in some of the entries in the school register. The learned Judges of the High Court considered that the evidence of certain witnesses who deposed to some of the facts on which the lower Court relied, did not strictly comply with the requirements of Section 50 of the Indian Evidence Act, firstly because the witnesses had no special means of knowledge on the subject of relationship between the plaintiff and Ram Piari and

secondly because what Section 50 made relevant was not mere opinion, but opinion "expressed by conduct" of persons who as members of the family or otherwise, had special means of knowledge. It seems to us that the question as to how far the evidence of those particular witnesses is relevant u/s 50 is academic, because it is well-settled that continuous cohabitation for a number of years may raise the presumption of marriage. In the present case, it seems clear that the plaintiff and Ram Piari lived and were treated as husband and wife for a number of years, and, in the absence of any material pointing to the contrary conclusion, a presumption might have been drawn that they were lawfully married. But the presumption which may be drawn from long cohabitation is rebuttable, and if there are circumstances which weaken or destroy that presumption, the Court cannot ignore them. We agree with the learned Judges of the High Court that in the present case, such circumstances are not wanting and their cumulative effect warrants the conclusion that the plaintiff has failed to prove the factum of his marriage with Ram Piari. In the first place, the plaintiff has not examined any of his near relations such as his brother, or collaterals living in Ajnoha, or any co-villagers, whose presence at the marriage would have been far more probable than the presence of the witnesses examined by him. He has also not examined any of the witnesses residing in or round about Holta estate in spite of the fact that his own case is that the marriage was celebrated with great pomp and show. It was suggested in the Courts below that since Defendant No. 2 is an influential person, no local witnesses would be available to support the plaintiff's case, but the High Court has very fully dealt with this aspect and pointed out firstly that Raj Kumari had litigation with a number of persons belonging to Palampur and such persons, would not be under her influence, and secondly that no good reason has been shown why Raj Kumari, who is alleged to have brought about the marriage between the plaintiff and Ram Piari, should take a completely hostile attitude towards him.

Then again, neither the parents nor any of the relations of Ram Piari have been examined to support the plaintiff. On the other hand, Ram Piari's own mother, Ganga, has deposed that the former was never married to the plaintiff, and the statement made by Ram Piari in her will, which is a very valuable piece of evidence, is to the same effect. It is also incredible that in spite of the love which Ram Piari is said to have had for the plaintiff, she left him and went away to live with Raj Kumari, and that during the long period when Ram Piari was away, the plaintiff should never have visited her or made enquiries about her and his alleged daughter, Parvin Kumari. This is all the more strange, since it is stated by the plaintiff that Ram Piari continued to love him and that she and Raj Kumari inwardly hated each other. Parvin Kumari says in her deposition that she had never seen her father and that when she reached the age of discretion she found herself living at Palampur. The conduct of the plaintiff in showing such complete indifference to his wife and daughter as is disclosed in his evidence is most unnatural, and no less unnatural is his conduct in instituting a suit to deprive her of properties which had come into her hands not by reason of anything done by

him but as a result of the generosity shown towards her by a stranger. The plaintiff's case that the properties in dispute were acquired by Ram Piari with the aid of his money is wholly untrue and it has been rightly found by both the Courts that they were acquired for her by Raj Kumari. The plaintiffs witnesses have tried to exaggerate his means to support his case, but the truth appears to be that he had hardly any means of his own beyond the somewhat meagre salary which he used to draw as a Court typist."

14. Besides the evidence of plaintiff and his two witnesses that there was a marriage between Rajappa and the 1st defendant, there was no other evidence. The plaintiff and the other witnesses were minors when allegedly the marriage took place and if it is believed that the marriage took place in 1938, then the marriage itself was bad because in 1938, the 1st husband of Defendant No. 1 was alive. When a woman is married and starts living with a man other than her husband, there cannot be presumption of his or her marriage with the person with whom she is living. This is also settled by a judgment of this Court in Dalavayi Nagarajamma Vs. State Bank of India and Others, . Therefore, on the issue that the marriage was not proved between Rajamma and the 1st defendant, we agree with the findings of the Trial Court. So, on this account, the plaintiff could not succeed and any gift deeds executed by 1st defendant in favour of plaintiff with respect to the property of Rajappa or his brother, could be of no avail as she was not entitled to inherit the properties.

15. Now, the only question which remains is the question relating to the plaintiffs claim of a share in the property along with the daughter of Papaiah, to the property of Papaiah and Rajappa. No evidence has been produced by plaintiff to show that Papaiah died in the year 1951. Rajappa died admittedly in the year 1975. There is no dispute with regard to the date of death of Rajappa, whereas with regard to Papaiah, it was contended by the plaintiff that he died in 1951, but he did not produce any evidence. On the other hand, the defendants produced Ex.B-8 which is Certified Copy of a certificate issued by the Sarpanch, according to which, Papaiah died on 9.7.1956 i.e., after the Hindu Succession Act, 1956 (hereinafter referred to as "the Act") came into force. Therefore, succession to the property of Rajappa and Papaiah both will have to be governed by the provisions of the Act. Papaiah is the father of Defendant No. 2 and uncle by half blood, to the plaintiff. Plaintiffs rights if any to inherit properties of Papaiah and Rajappa would have to be ascertained in the light of provisions of the Act

16. In this connection, the respondents rely on Section 18 of the Act and submit that heirs related to an intestate by full blood shall be preferred to the heirs related by half blood. Rajappa and Papaiah were full blood brothers and the Defendant No. 2 is Papaiah's daughter, whereas Rajappa and Papaiah were half blooded brothers of Munuswamy, who was the father of plaintiff. The provision is so clear that it does not need any further examination. It lays down:

"18. Heirs related to an intestate by full blood shall be preferred to heirs related

by half blood, if the nature of the relationship is the same in every other respect."

17. The respondents relied on a judgment in Narayanan Vs. Pushparajini and Others, , wherein it has been laid down that in respect of succession to the property of an intestate having no wife or children, but sisters by full blood and brothers by half blood are available, sisters by full blood would exclude brothers by half blood from inheritance.

18. Similarly in a judgment in Woman Govind Shindore and Others Vs. Gopal Baburao Chakradeo and Others, , it was mentioned that Section 18 of the Act refers to heirs related to intestate by full blood to be preferred to heirs related to him by half blood, these heirs may be male or female or both, subject to condition that the nature of relationship to the deceased is same, relations of whole blood whether male or female, are to be preferred to half blood. Full blood, half blood and uterine blood have been defined u/s 3(e) of the Act. We are concerned with definition of full blood and half blood which are mentioned in Section 3(e)(i) of the Act, which lays down:

"Two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives."

19. In this view of the matter, the plaintiff is not entitled to inherit the properties of Rajappa and hence the appeal fails, which is accordingly dismissed. No costs.