
(2004) 03 AP CK 0035
In the Andhra Pradesh High Court
Case No : SA No. 980 of 2002

P. Ramachandra Reddy

APPELLANT

Vs

Munna Lal (died) and Others

RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2004) 4 ALD 127 : (2004) 4 ALT 639

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

Bench : Single Bench

Advocate : B. Adinarayana Rao and A. Sudershan Reddy, for the Appellant; Deepak Bhattacharjee, for Respondent No. 3, R. Chandrasekar Reddy and P.M. Gopal Rao for Respondent No. 4 and Padma Sharnappa, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The unsuccessful plaintiff being aggrieved of not being successful in toto in getting a decree for specific performance and being successful only to an extent of 1/6th share of executant of the agreement of sale, had preferred the present Second Appeal.

2. Sri B. Adinarayana Rao, the learned Counsel representing the appellant had raised the following substantial questions of law to be decided in the present Second Appeal:

1. Can a third party claiming interest in the suit property, claim adjudication of rights in a suit for specific performance ?
2. Whether the Courts below had arrived at the correct conclusion relating to the female heirs of late Kalika Pershad/respondents 10 to 14 and their entitlement to the respective shares in the estate of their deceased father Kalika Pershad in the absence of proof of devolution of the suit property as per the provisions of the Hindu Succession Act, 1956 ?

3. On whom does the burden lie in relation to the devolution of interest by way of succession to the estate of the deceased Kalika Pershad?

The learned Counsel in all fairness submitted that except these questions, no other substantial questions of law would arise for consideration in the present Second Appeal. The learned Counsel while making elaborate submissions had pointed out that in view of the dismissal of A.S.No. 21/95 which was filed by the defendants, the Judgment and decree, so far as it relates to the 1/6th share granted by the trial Court in favour of appellant/plaintiff, so far as it relates to the share of the deceased 1st defendant Munnalal is concerned, had attained finality since no Second Appeal was preferred questioning the said judgment and decree. The learned Counsel, no doubt, in all fairness submitted that it would have been just and proper if both the Appeals A.S.No. 21/95 and A.S. No. 134/96 on the file of I Additional Chief Judge, City Civil Court, Secunderabad had been decided by a Common Judgment since both the Appeals were preferred by the defendants and the plaintiff aggrieved by the Judgment and decree of the Court of first instance in O.S. No. 1337/87 on the file of I Asst. Judge, City Civil Court, Secunderabad. The learned Counsel had taken this Court through the evidence of PW-1 to PW-4 and DW-1 and DW-2 and Exs.A-1 to A-5 and Exs.B-1 and B-2. The learned Counsel contended that the certified copy of the Judgment in O.S. No. 1886/89 on the file of I Additional Judge, City Civil Court, Hyderabad - Ex.B-1, and the final decree in I.A.85/90 in O.S. No. 1886/89 - Ex.B-2, are all only collusive proceedings with a view to defeat the rights of the plaintiff/agreement holder. The learned Counsel also would submit that originally the stand taken by the plaintiff in the plaint is that the 1st defendant Munnalal, executant of agreement of sale dated 14-1-1969 was the absolute owner of the property who had agreed to sell the said property, but however, the learned Counsel also had drawn the attention of this Court to Para 5(A) by virtue of which the plaint was amended wherein it was pleaded that Defendants 10 to 18 have no succeeding right over the suit land since after the death of Kalika Pershad all the sisters of Munnalal had relinquished their rights in favour of their brother in an oral family settlement. However, the learned Counsel would contend that this aspect was taken advantage of in shifting the burden which is not permissible. The Counsel would maintain that it is for the defendants to establish how they are entitled to their respective shares, what was the date of death of Kalika Pershad and when actually succession had opened and in the absence of any evidence in this regard, especially in the light of the mutation of revenue records in favour of Munnalal and also in the light of the stand taken that Exs.B-1 and B-2 are only collusive proceedings, necessarily the Courts below could have arrived at a conclusion that the plaintiff is entitled to a decree for specific performance as prayed for. The learned Counsel would contend that the aspect of death of Kalika Pershad normally would be within the knowledge of the defendants and the plaintiff being only an agreement holder, cannot be expected to prove such fact and in this view of the matter, both the Courts, by wrong casting of the burden of proof, had recorded findings unsustainable in law and in

this view of the matter, the plaintiff is bound to succeed. The learned Counsel also made certain submissions relating to Ex.A-5, Ex.B-1 and Ex.B-2, the mutation of revenue entries in favour of the deceased 1st defendant Munnalal and different provisions of Hindu Succession Act, 1956 as well.

3. Per contra, Sri Chandra Shekar Ready, the learned Counsel representing the contesting respondents would contend that the relief of specific performance is a discretionary relief and when the plaintiff came up with a specific plea that Munnalal was the absolute owner of the total property such relief could not have been granted and the Court of first instance in fact even erred in granting the relief to an extent of 1/6th share of the deceased Munnalal. The learned Counsel no doubt submitted that in view of the fact that certain defendants had already preferred A.S. No. 21/95 questioning the said aspect and since the said Appeal was dismissed and had attained finality, the said question cannot be agitated at this stage. The learned Counsel also pointed out that Exs.B-1 and B-2 are in pursuance of compromise. The learned Counsel also had taken this Court through the respective pleadings of the parties and had contended that now the question of wrong casting of burden of proof would not arise for consideration at all for the reason that the plaintiff himself had taken a plea of relinquishment by introducing Para 5(A) by way of amendment of the pleadings and the boundaries as shown in the compromise decree had been taken advantage of by the plaintiff. Having accepted the same, now the plaintiff cannot question the said aspect, at any rate especially in the light of the plea raised by him that the sisters had relinquished their shares. The Counsel also submitted that though the pleading was amended more than once, at no point of time this question was specifically raised nor the same was put in issue and hence at the stage of Second Appeal, the appellant/plaintiff cannot be permitted to raise this question stating that since the date of Kalika Pershad was not proved, it should be taken that Munnalal as such was the absolute owner of the property and hence he was entitled to execute Ex-A1 as absolute owner thereof in Favour of plaintiff. The learned Counsel concluded stating that at any rate, these are all questions of fact and not questions of Law, much less substantial questions of law, and hence in view of the limitations imposed on this Court while exercising the jurisdiction u/s 100 of the Code of Civil Procedure, no interference is called for and this Second Appeal is bound to fail. The Counsel also had placed reliance on Yash Deva v. Mayo College AIR 1975 Raj. III, A.H. Pinto (dead) by LRs. v. V. Chaniyappa and Ors. 2000 (8) Sup 304, Vinod Kumar Arora Vs. Surjit Kaur, , Pavan Kumar v. P. Gopala Krishna 1990 (1) ALT 209, Santosh Hazari v. Purushottam Tiwari 2001 (2) ALD 40 (SC) : AIR 2001 SC 965.

4. Heard both the Counsel and perused the oral and documentary evidence available on record, the findings recorded by the Court of first instance and the findings recorded by the appellate Court as well.

5. The appellant filed the suit O.S. No. 1337/87 praying for the relief of specific performance of agreement of sale dated 14-1-1969 executed by the deceased

1st respondent-Munnalal/1st defendant in respect of the land bearing S.No. 66/1, admeasuring Acs.5-25 guntas at Trimalgherry, Secunderabad. The 1st defendant denied the very execution of the agreement of sale and also his right to sell the plaint schedule property stating that the said property was acquired by his late father Kalika Pershad and after his death he had inherited the said property along with his five sisters and hence the same is not enforceable. Respondents 5 to 9 who were brought on record as legal representatives of the deceased 1st respondent also had taken the same plea, no doubt, which they are expected to do in law. Respondents 10 to 14, sisters of the 1st respondent, got themselves impleaded in the suit and opposed the relief of specific performance on the ground that the plaint schedule property belonged to their father Kalika Pershad and after his death the said property devolved upon them and also the 1st respondent in equal shares and hence the 1st respondent/1st defendant has no exclusive right to deal with the said property and the plaint schedule property already was the subject-matter of partition decree made in O.S. No. 1880/89 dated 29-12-1989 on the file of I Additional Judge, City Civil Court, Hyderabad. The 3rd respondent remained absent and had not contested the suit. The 4th respondent filed a memo adopting the written statement of the 1st respondent. The 2nd respondent no doubt had set up a rival title to the suit claim claiming through his maternal grand father late Ponnammul who in turn was said to have obtained the suit property from late Mir Agha Hussain and late Fathe Khan under lease deed dated 27-2-1300 Fasli. The Court of first instance partly decreed the suit for specific performance in favour of the plaintiffs to an extent of 1/6th share in the suit property to which Munnalal/1st defendant, the executant would be entitled to and dismissed the suit in relation to 5/6th share claimed by Respondents 10. to 14. Respondents 4 to 9 and 15 to 18 had questioned the said Judgment and decree to the extent of granting 1/6th share in A.S.No. 21/95 on the file of I Additional Chief Judge, City Civil Court, Secunderabad and the same was dismissed. The said judgment and decree had not been challenged and thus they had attained finality. The plaintiff as appellant questioning the Judgment and decree dismissing his suit to an extent of 5/6th share preferred A.S.No. 134/96 on the file of I Additional Chief Judge, City Civil Court, Secunderabad and the said Appeal was dismissed. Aggrieved by the same, the present Second Appeal is preferred,

6. The substantial questions of law which were raised and argued already had been referred to supra and hence the said questions need not be repeated again.

7. The respective pleadings of the parties are as hereunder :

It was pleaded in the plaint that the land bearing Sy.No. 66/1 admeasuring 5 acres 25 gts. situated at Tirumalgherry Village under Vallabh Nagar Mandal was owned by late Kalika Pershad, the father of the deceased 1st defendant Munnalal and after the death of the father of the deceased 1st defendant Munnalal due to some financial difficulties, he offered to sell the said agricultural land to the plaintiff in the year 1969 for a valid consideration of Rs. 5,500/- and executed an

agreement of sale dated 14-1-1969. In pursuance of the same, the 1st defendant received the entire consideration in advance and agreed to execute the sale deed after obtaining necessary permission under A.P. (T.A) Tenancy and Agricultural Lands Act, 1950. After some time the plaintiff approached the deceased 1st defendant Munnalal on number of occasions for getting the sale deed executed in his favour, but the defendant always postponed the same on one pretext or the other saying that the Government is saying that it is inam land and for inam land permission for sale cannot be granted. In the year 1982, the plaintiff came to know that the enquiry proceedings are pending in between the Government and deceased 1st defendant before the Commissioner, Survey and Settlements, Land Reforms, Government of Andhra Pradesh and the plaintiff got himself impleaded in the said proceedings on the ground that he had purchased the suit property from the defendant Munnalal under agreement of sale. The proceedings before the Commissioner, Survey and Settlement, concluded on 8-12-1983 upholding the claim of the father of the 1st defendant who purchased the suit property in auction. Thus there are no disputes as regards the title of the deceased 1st defendant Munnalal is concerned. Even after passing of the Commissioner order, the deceased 1st defendant Munnalal had been evading to get the sale deed registered in favour of the plaintiff and the plaintiff finding no other alternative got issued a legal notice for the specific performance of the contract for getting the sale deed registered in his favour in respect of the suit property and having received no reply, the plaintiff filed this suit.

8. As already referred to supra, Para 5(A) had been introduced in the original plaint by way of amendment and in the said plaint, the following averments had been made:

It was pleaded that Defendants 10 to 18 have no subsisting right over the suit land. After the death of Kalika Pershad, all the sisters of Munnalal have relinquished their right in favour of his brother in an oral family settlement. By the date of the suit contract dated 14-1-1969, the deceased Munnalal was holding the suit land as the sole and exclusive owner. The sisters of Munnalal were also specifically represented to the plaintiff that they have no subsisting interest in the suit land in view of their relinquishment in favour of Munnalal. The children of Munnalal are bound by the suit agreement and they are under obligation to honour the same. The decree of partition dated 29-12-1989 obtained in O.S.No. 1886/89 by the sisters and children of Munnalal is collusive one and the same is not binding on the plaintiff and the plaintiff is not a party to the said suit. It was pleaded that Defendants 14 to 18 are not entitled for any share, much less 1/6th share as claimed by them.

9. The 2nd defendant was impleaded as per orders in I.A. No. 879/87 and Defendants 3 and 4 were impleaded as per orders in I.A. No. 71/89 and Defendants 5 to 9 were brought on record as legal representatives of the deceased 1st defendant as per orders in I.A. No. 570/90 dated 12-7-1990 and in

as per the orders in I.A. No. 285/92 dated 13-3-1992, Defendants 10 to 14 as daughters of late Kalika Pershad and Defendants 15 to 18 as per orders in I.A. No. 524/92 dated 20-4-1992 as the legal representatives of the deceased Munnalal were brought on record.

10. The 1st defendant, while alive, filed written statement with the following allegations:

It was pleaded that the allegation that after the death of the -father of the deceased 1st defendant Munnalal due to some difficulties, he offered to sell the suit property to the plaintiff in the year 1969 for a valid consideration of Rs. 5500/- and executed an agreement of sale is false. It is also false that in pursuance of sale agreement, the 1st defendant received the entire consideration and agreed to execute the sale deed after obtaining necessary permission from the competent authority under the A.P. (T.A) Tenancy and Agricultural Lands Act, 1950. The deceased 1st defendant Munnalal did not agree to sell the land and did not execute sale agreement and that he assured the plaintiff that the land is not inam land. The plaintiff was acting as pairavikar for the deceased 1st defendant Munnalal since 1968 in the proceedings in respect of the land and for the said purpose, reposing confidence in him, the original documents had been handed over to him and the plaintiff used to secure signatures of the deceased 1st defendant Munnalal on number of papers. The sale agreement is forged one. The Judgment of Commissioner is in favour of the deceased 1st defendant Munnalal denying right of 2nd defendant and without recognizing any right of the plaintiff. Though the plaintiff was impleaded as party, no rights are decided in his favour. The 2nd defendant aggrieved by the Judgment of the Commissioner preferred W.P. No. 2978/84 in the High Court of A.P., but the 2nd defendant did not implead the plaintiff as party to the writ petition. The said W.P. No. 2978/84 is disposed of on 22-12-1984 holding that the question whether the land is an inam land or patta land and the consequences flowing from it will have to be decided on evidence by the Civil Court. Thus the allegation of the plaintiff that there are no disputes as regards the title is not true. The suit property was acquired by late Kalika Pershad, father of the deceased 1st defendant. He died leaving behind one son, i.e., the deceased 1st defendant Munnalal, and five daughters. On his death, the property devolved upon the deceased 1st defendant Munnalal and his five sisters equally. As such the sale agreement set up by the plaintiff is not enforceable.

11. In the written statement of the 2nd defendant it was pleaded as hereunder:

It was denied that Sy.No. 66/1 admeasuring 5 acres 25 gts. situated at Trimulgherry Village was owned by late Kalika Pershad, father of the 1st defendant. The 1st defendant has no right to enter into any agreement regarding the sale of the land as 2nd defendant is the owner of the land admeasuring Acs.6-15 gts. in Sy.No. 66/1. The 2nd defendant's maternal grand father late Ponnammul was inducted into possession of a part of the land known as Fathe Khan Bowli and the Uppu Neel Bowli by late Mir Agha Hussain and late Fathe

Khan under lease deed dated 27-2-1300 Fasli. Subsequently, the 2nd defendant's grand father appeared to have lent certain amounts to his said lessors. The said lessors were Jagirdars of Trimulgherry Village. Since then late Ponnammul and after his death his son-in-law late Harry Harwood (2nd defendant's father) and after his death the 2nd defendant had been in continuous possession and enjoyment of the leasehold lands. It was also pleaded that old S.No. 62 for which the corresponding new S.No. 66/1 admeasuring Acs.6-15 guntas was also included in the said leasehold land. In the year 1930 as the lessor could not discharge the amounts to 2nd defendant's maternal grand father, the leasehold lands became the absolute property of the 2nd defendant's grand father. Thus the 2nd defendant's father became the owner. Subsequent to his death the 2nd defendant's father and after his death, the 2nd defendant had been paying the land revenue for the said lands and had been in possession. While so, certain proceedings appear to have been taken by one Syed Ahmed Zaidi, the Mutawalli of Koh-Imam-Zamin stating that the old S.No. 62 (S.No. 66/1) was also mentioned as service inam land. He appears to have mentioned in his application to the Collector, Land Records that the inam lands including old S.No. 62 were taken under Government supervision during the Fasli 1331 and that on 18-1-1951 Muntakab No. 13 of 51 was issued, wherein along with other survey numbers, the old S.No. 62 also was mentioned and hence requested for corrections to be made in the settlement records. In spite of above proceedings, the possession and enjoyment of the 2nd defendant's maternal grand father, 2nd defendant's father and the 2nd defendant was not disturbed. After the so-called auction in which Sri Kalika Pershad was stated to be the highest bidder, no proceedings under the A.P. (Telangana Area) Land Revenue Act Fasli 1317 for putting the purchaser in possession took place and no certificate was issued in his favour. Admittedly, neither the Mutawalli, the Government, the auction purchaser nor his son was ever in physical possession of S.No. 66/1 at any time. While so, the 2nd defendant filed an application before the Revenue Divisional Officer, Hyderabad to declare the land in question S.No. 62, admeasuring Acs.6-15 gts. as 2nd defendants patta land. The 2nd defendant was obliged to file the said application as the A.P. (Telangana Area) Abolition of Inam Act 9 of 1967 was held to be ultra vires by this Court. The 1st defendant got himself impleaded as an objector while disposing of the said application and the R.D.O. ultimately held that as the correction of records u/s 87 of A.P. (Telangana Area) Land Revenue Act 1317 Fasli ordered by the Collector of Land Records on 3-11-1952 in File No. 53/30/52 holds good, no relief can be granted to the 2nd defendant. Thus the deceased 1st defendant Munnalal did not himself seek for any relief in any proceeding before the R.D.O. except raising objection to the 2nd defendant's petition. Without impleading the 2nd defendant as a party, the 1st defendant filed a petition before the Commissioner of Settlement and Land Records, purporting it to be a Revision petition seeking correction of records in respect of S.No. 66/1 of Trimulgherry Village and also cancellation of the Judgment passed by the R.D.O. city in his file No. B/101180/1980 and for declaring the land as patta of the plaintiff. The Commissioner, Survey Settlement

and Land records, Andhra Pradesh, Hyderabad, after narrating the respective corrections simply stated that the orders of the Collector confirming the auction which are the earliest ones are valid and should be acted upon, and with that observation he disposed of the so-called revision petition. The Commissioner, Survey Settlement and Land Records ordered dated 21-11-1983 for the correction of the records in S.No. 66/1 in Trimulgherry Village and by the said order the Commissioner directed that entries should be corrected to incorporate the name of Sri Munnalal. He preferred an appeal before this Court in W.P. No. 2978/84. The same was disposed of on 22-12-1984 observing that the order of the Commissioner will not effect the civil rights of the parties and those will have to be decided in Civil Court. The further question whether the land is inam land or patta land and the consequences flowing from it also have to be decided on evidence by the Civil Court and was not gone into in detail by the Commissioner. But so far, either the 1st defendant Munnalal or the 2nd defendant have not approached the Civil Court for relief. Therefore, the 1st defendant had no right to enter into agreement with plaintiff as he was not the owner of the suit lands. The 2nd defendant preferred proceedings for issuance of patta and the same is pending before the R.D.O. Sy.No. 66/1 in Trimulgherry Village contains several acres of land i.e., total area is Acs.6-15 guntas, out of which the plaintiff is claiming for specific performance for only Acs.5.00 and as such the plaintiff has no right to approach the Court for injunction against the entire land.

12. The 7th defendant filed written statement which as adopted by Defendants 5, 6, 8 and 9 and the stand taken by these parties is just similar to the stand taken by the 1st defendant.

13. Defendants 10 to 15 filed written statement pleading as hereunder :

It was pleaded that the Kalika Pershad, the father of the 1st defendant and father of Defendants 10 to 14 purchased Sy.No. 66/1 admeasuring Acs.5-25 gts. situated at Trimulgherry Village under a public auction held by Revenue officials. The allegations that 1st defendant entered into agreement dated 14-1-1969 of suit property for a consideration of Rs. 5500/- and that he received the entire sale consideration were denied. The suit property is self-acquired property of late Sri Kalika Pershad and on his death, the 1st defendant and these defendants became entitled to equal shares as his successors. Thus, the 1st defendant has no right in and over the suit property and the said agreement is not binding on them. It was denied that they have no subsisting right over the suit land and that after the death of Kalika Pershad all the sisters of Munnalal i.e., these defendants, had relinquished their interest and right in favour of their brother Munnalal in an oral family settlement arrived amongst them in view of their marriage being performed by father by expending huge amounts. It was further pleaded that the 1st defendant never held the property as the sole owner, but was managing the same for and on behalf of these defendants also and for their benefit. The question of relinquishment does not arise at all as these defendants never relinquished their right in and over their share in the suit properties in

favour of anybody muchless in favour of the 1st defendant. The suit property becomes ancestral property of the children of Munnalal and they became coparceners by birth being Hindus. Further, that the allegation that the partition dated 29-12-1989 obtained in O.S. No. 1886/89 by these defendants and children of Munnalal is collusive and the same is not binding on the plaintiff as he was not a party was denied. The alleged suit agreement is dated 14-1-1969 and the suit was filed in 1987 and as such the suit is hopelessly barred by limitation.

14. To the amended pleading in the plaint, an additional written statement was filed by the 6th defendant which was adopted by Defendants 4, 5, 7, 8, 9 and 16 to 18, wherein specifically the relinquishment pleaded in the amended pleading had been denied.

15. On the strength of the respective pleadings of the parties, the following Issues and additional Issues were settled :

Issues

1. Whether the suit agreement is forged and invalid as claimed by the Defendant No. 1 ?
2. Whether the plaintiff is entitled for specific performance of contract of sale ?
3. To what relief ?

Additional Issues:

1. Whether the plaintiff has cause of action for filing this suit ?
2. Whether the defendants are entitled for exemplary costs as claimed ?

The plaintiff had examined himself as PW-1 and apart from him, PW-2 to PW-4 were examined. Ex.A-1 is the agreement of sale dated 14-1-1969. Ex.A-2 is the receipt. Ex.A-3 is the office copy of legal notice dated 14-11-1985. Ex.A-4 is the returned postal cover and Ex.A-5 is the certified copy of the order dated 21-11-1983. The 6th defendant was examined as DW-1 and the 14th defendant was examined as DW-2 and Exs.B-1 and B-2 were marked. Ex.B-1 is a certified copy of the Judgment in O.S. No. 1886/89 on the file of I Additional Judge, City Civil Court, Hyderabad and Ex.B-2 is final decree in I.A. No. 85/90 in O.S. No. 1886/89. On appreciation of the oral and documentary evidence execution of agreement of sale by the 1st defendant was believed, but however in view of the fact that the executant of the agreement of sale was entitled to only 1/6th share, the relief to that extent was granted and as already referred to supra, an attempt was made to question the same by way of Appeal and the same was dismissed. Hence, the said relief granted in favour of the plaintiff already had attained finality and the said question cannot be reagitated now. The appellate Court in the Appeal A.S. No. 134/96 as against which the present Second Appeal is preferred, after taking into consideration the limited scope of the Appeal at para-23 had framed the following Point for consideration:

"Whether the lower Court is right in dismissing the plaintiffs suit to the extent of 5/6th share in the suit property on the ground that Defendant No. 1 Munnalal's interest in the suit property is only 1/6th and that the suit agreement could not be enforced against the sisters of the first defendant i.e., the Defendants 10 to 14 ?"

The appellate Court commencing from paras 24 to 35 had discussed all the aspects in detail and had confirmed the findings recorded by the Court of first instance. The question relating to the date of death of Kalika Pershad and the devolution of estate on the heirs had been raised and elaborately discussed by the appellate Court. Though much water had flown by not impleading the parties subsequent thereto and though the plaintiff had thought of amending the pleading, he had not taken a specific stand to the effect that Kalika Pershad died prior to 17-6-1956, prior to the Hindu Succession Act 1956 and hence the daughters would not be entitled to the respective shares. On the contrary, Para 5(A) was introduced by way of amendment to the plaint wherein it was specifically pleaded that all the sisters of the 1st defendant had relinquished their rights and interest in favour of the 1st defendant Munnalal in an oral family settlement which is definitely suggestive of the fact that these parties as heirs of Kalika Pershad had rights in these properties at a particular point of time and the said rights had been relinquished. No doubt, the said plea was disbelieved by both the Courts below. In the evidence also while cross-examining the witnesses DW-1 and DW-2, at least no suggestions were put in this regard. It is no doubt true that if specific stand was taken in this regard, the "initial burden of proving that they are entitled to the shares by virtue of the death of Kalika Pershad in view of the provisions of the Hindu Succession Act, 1956 would be on such parties asserting such rights. But, in the absence of such pleading, especially in the light of the specific plea taken relating to the relinquishment of their shares, it cannot be said that the view expressed by the appellate Court on the aspect of burden of proof is not in accordance with law. The aspect of burden of proof also may have to be decided depending upon the facts of a particular given case. In the light of the specific pleading relating to relinquishment taken by a plaintiff, the contesting defendants had though it fit not to further prove the facts which may not be necessary. Hence, such question cannot be agitated either at the stage of appeal or at the stage of Second Appeal.

16. I had given my anxious consideration to the findings recorded by the Appellate Court commencing from Paras 24 to 35 and I do not see any perversity in the findings recorded by the appellate Court which deserve to be disturbed in this Second Appeal. No doubt, the Counsel for the contesting respondents had placed strong reliance on the decisions referred *Yash Deva v. Mayo College, A.H. Pinto (dead) by LRs. v. Chaniyappa and Ors.*, *Vinod Kumar Arora v. Smt. Surjit Kaur*, *Pavan Kumar v. P. Gopala Krishna* and *Santosh Hazari v. Purushottam Tiwari* (supra). There cannot be any quarrel in relation to the legal propositions enunciated therein.

17. In the light of the findings recorded above, this Court does not find any reason to interfere with the judgments and decrees made by the Courts below and accordingly the second appeal shall stand dismissed, without costs.