

(2005) 06 AP CK 0106

In the Andhra Pradesh High Court

Case No : Rev. CMP No. 964 of 2005 in SA No. 980 of 2002

P. Ramachandra Reddy

APPELLANT

Vs

Munna Lal (died) by LRs. and Others

RESPONDENT

Date of Decision : 21-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2005) 5 ALD 356

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

Bench : Single Bench

Advocate : A. Sudershan Reddy, for the Appellant; Deepak Bhattacharjee, for the Respondent No. 3, R. Chandra Sekhar Reddy and P.M. Gopal Rao, for the Respondents No. 4 and Padma Sharnappa, for the Respondent Nos. 5 to 9 and 11, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—P. Ramachandra Reddy, the appellant in S.A. No. 980/2002 filed the present Review application under Order 47 Rule 1 read with Section 114 of the CPC to review the judgment and decree made in the aforesaid Second Appeal.

2. Heard Sri A. Sudershan Reddy and Sri R. Chandra Sekhar Reddy, the respective Counsel representing the parties.

3. Sri Sudershan Reddy, the learned Counsel representing the Review petitioner mainly concentrated on the aspect that the defendants failed to establish that Kalika Pershad expired after 17-6-1956 and in view of the same there is no question of the female heirs succeeding to the estate of the deceased father. The learned Counsel in elaboration had pointed out the findings recorded in this regard in the Second Appeal and would contend that in the light of Para 5-A which was introduced in the original plaint by filing of amendment certain findings had been recorded but that would not operate as estoppel and on a question of law there cannot be any estoppel of any kind whatsoever and hence

in the absence of disclosure of the date of death of Kalika Pershad the findings recorded by this Court in the Second Appeal cannot be sustained. The learned Counsel also would maintain that the burden of proof relating to the date of opening of the succession will be on the female heirs who claimed share in the estate of the deceased father. The learned Counsel also would maintain that the rule of succession is a public policy and inheritance does not depend on the will of the individual owner and inheritance is a rule laid down by the State not merely for the benefit of the individual but for the reasons of public policy and hence of the findings recorded in this regard cannot be sustained and the same are to be reviewed. The learned Counsel also placed reliance on certain decisions in this regard.

4. Per contra, Sri Chandrasekhar Reddy, the learned Counsel representing the contesting respondents would maintain that in the light of the clear findings recorded by this Court, the contentions advanced by the learned Counsel for the Review petitioner cannot be sustained. The learned Counsel also had pointed out to the relevant findings recorded by this Court in this regard and would maintain that the Review application definitely is not maintainable since no error apparent on the face of the record or any such like reason had been pointed out by the learned Counsel for the Review petitioner.

5. Heard both the Counsel.

6. The unsuccessful plaintiff 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 had preferred the second appeal aforesaid. This Court in fact had taken into consideration the substantial questions of law raised by the parties and recorded reasons in detail. This Court, also had referred to the respective pleadings of the parties and the amendment introduced to the original plaint by way of Para 5-A and in view of the fact that the execution of the agreement of sale by the 1st defendant was believed the relief relating to the share to which the 1st defendant would be entitled to had been confirmed i.e., 1/6th share, especially in view of the fact that the said relief cannot be granted in favour of the plaintiff already had attained finality since her attempt to question the same by way of Appeal also proved to be a futile exercise. This Court also had taken into consideration the Point framed for consideration at Para-23 as hereunder:

"Whether the lower Court is right in dismissing the plaintiff's 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 relevant findings recorded in this regard also may be glanced at this juncture:

"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 the 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 the plaintiff, the contesting defendants had thought 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."

In the light of the aforesaid findings which had been recorded by this Court while deciding the Second Appeal the self-same grounds cannot be raised by way of Review and at any rate definitely it is not an error apparent on the face of record so as to attract the provisions of Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure. Definitely the remedy is not by way of Review.

7. However on the aspect of nature of the laws of inheritance and transfer the learned Counsel for the Review petitioner placed strong reliance on Jitendra M. Tagore v. G. Mohan Tagore 9 B.L.R. 377 = 18 W.R. 359 = I.A. Sup. 47, wherein it was held at Page 416 as hereunder:

"Inheritance does not depend on the will of the individual owner: transfer does. Inheritance is a rule laid down (or, in the case of custom recognized) by the State, not merely for the benefit of individuals, but for reasons of public policy". 9 B.L.R. 394.

"Savigny points out that the laws of inheritance are specially of a public character removed from the domain of individual will. Savigny specifies the laws of the family and of succession as those allowing the least scope to free action, and in

his system he says expressly that these laws are not modifiable by the disposition of any person. This is, indeed, the main principle of the Tagore case" Per West, J., in *In re Khandas v. Narrandas*, (1880) 5 Bom. 154 .

"A man cannot create a new form of estate or alter the line of succession allowed by law for the purpose of carrying out his own wishes or views of policy." 9 B.L.R. 395 (per Turner, L.J., in 6 M.I.A. 555).

In *Ramlinga v. Virupakshi*, (1883) 7 Bom. 538 (541) where two brothers agreed never to divide certain property, West, J., holding the agreement to be invalid observed:- "The perpetuity here proposed would be a "new form of estate," which it has been ruled, "a man cannot create for the purpose of carrying out his own wishes or policy"."

In *Balkrishna Trimbak Tendulkar v. Savitribai*, (1878) 3 Bom. 54 (57) where a son for a consideration relinquished his share in the property of his father and granted not to claim it during his father's lifetime or after that; he was still held entitled to succeed to his father's property etc., for "the course of devolution prescribed by the law could not be altered by private arrangement," and, in the absence of a disposition by the father, "the succession to his estate must still be governed by the provisions of Hindu Law." - Per West, J.

Submissions at length were made relying upon the said passage by the Counsel for the Review petitioner that in the absence of clear proof relating to death of Kalika Pershad the findings cannot be sustained. Reliance also was placed on *Sukumar Chakraborty Vs. Assistant Assessor-Collector and others*, and *Shanker Lal and Another Vs. Narendra Bahadur Tandon*, , to convince this Court that statement made under misapprehension of legal right definitely would not create estoppel. These decisions are not applicable to the present set of facts especially in the light of the findings recorded by this Court. The relevant findings recorded by this Court in the second appeal had been already referred to supra and hence this Court is of the considered opinion that in view of the limitations imposed on this Court while exercising review jurisdiction this is not a case to review either the judgment or the findings in any way and hence the Review C.M.P. is devoid of merit and accordingly? the same shall stand dismissed. No order as to costs.