
(2010) 06 AP CK 0084
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4654 of 2007

Padala Prasad and Others

APPELLANT

Vs

Padala Anandarao and Others

RESPONDENT

Date of Decision : 18-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2)
Hindu Marriage Act, 1955 — Section 11, 16, 17, 5
Hindu Succession Act, 1956 — Section 8

Citation : (2010) 06 AP CK 0084

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : K.V. Subrahmanya Narsu, for the Appellant; A. Venkataramana, for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This civil revision petition is filed against the orders dated 23.07.2007 passed by the Senior Civil Judge, Rajam in I.A. No. 384 of 2006 in O.S. No. 41 of 2006.

2. The revision petitioners, who are the third parties to the suit before the learned Senior Civil Judge, Rajam filed I.A. No. 384 of 2006 under Order 1 Rule 10 CPC contending that they are necessary parties to the suit filed by the respondents 1 and 2 against the respondent No. 3 for partition and that they have to be impleaded as defendants in the suit. It was submitted by them in the said interlocutory application that unless they are impleaded as defendants, they will be deprived of their rights in the schedule mentioned properties and they will be subjected to multiplicity of litigation. After making an enquiry into the said I.A., the learned trial Court dismissed the same. Feeling aggrieved, the petitioners-third parties preferred the present revision petition.

3. I have heard the learned Counsel on record.

4. The respondents 1 and 2 claiming to be the sons of the respondent No. 1 filed the suit for partition for division of the schedule mentioned properties which are said to be of Hindu Joint family into three equal shares and to allot one each share to them. It is a matter of record that Padala Narasinga Rao, the third respondent had two wives. The first wife is Ramanamma and the second wife is Mahalakshmi. There is no dispute to the fact that the respondents 1 and 2 are the sons of respondent No. 3 through his first wife, whereas the revision petitioners are the children through his second wife. It is the contention of the respondents 1 and 2 that since the marriage between the third respondent and Mahalakshmi was performed during the subsistence of marriage with his first wife Ramanamma, the alleged second marriage is void and the status of Mahalakshmi is only that of concubine and consequently, the status of the revision petitioners is that of illegitimate children. According to them, the revision petitioners being illegitimate children are not entitled for any share in the schedule mentioned properties, which are their ancestral properties.

5. The third respondent in the course of the written statement filed by him before the trial Court submitted that the respondents 1 and 2 are his sons and one Anuradha, is daughter through his wife Ramanamma and also submitted that he married Mahalakshmi with the consent of his first wife Ramanamma about 50 years prior to the filing of the written statement and the revision petitioners are his children through his second wife Mahalakshmi. According to him, the revision petitioners and the respondents are entitled for equal share in the property and the plaintiffs can claim only 1/7th share each, but not 1/3rd as claimed by them in the suit.

6. The contention urged by the revision petitioners before the learned trial Court is that the marriage of their mother Mahalakshmi was performed with the third respondent about 50 years back i.e. prior to coming into force of the Hindu Marriage Act, 1955 and the said marriage was performed with the consent of the first wife Ramanamma and further a gazette notification dated 11.04.1959 was made in the official gazette changing the surname of their mother from Vuppu to Padala and there afterwards her mother was called as Padala Mahalakshmi only. The marriage according to the revision petitioners is perfectly valid and that they borne out of lawful wedlock and they are entitled to claim equal share with that of the respondents 1 and 2 in the schedule mentioned properties. It is also their contention that the suit is not maintainable since they and the sister of the respondents 1 and 2 by name Anuradha, who are necessary parties are not added as parties to the suit. According to them without their presence, the suit is bad for non joinder of necessary parties. They further submitted that a plain reading of the plaint indicates that the properties are the self-acquired properties of the third respondent to which he succeeded according to Section 8 of the Hindu Succession Act, 1956 and if that is so, during his life time the respondents 1 and 2 are not entitled to claim any share in the property and thus, the suit itself is not maintainable.

7. The learned Trial Court proceeded on the premise that the marriage of Mahalakshmi with the Narasingrao, the third respondent is not proved, she can be considered as a concubine and consequently the revision petitioners are illegitimate children. According, to the learned trial Court by virtue of Section 16 of the Hindu Marriage Act, 1955 the revision petitioners are not entitled to claim equal share with that of the respondents 1 and 2 in the plaint schedule property which is the ancestral property, best they can claim share in the property of the third respondent after his death. The learned trial Court thus, held that they cannot claim any share in the ancestral property during the lifetime of the third respondent, and accordingly dismissed the petition filed by the revision petitioners on the ground that it is not maintainable.

8. The learned Counsel appearing for the respondents relied upon the decisions in Hanmanta Laxman Thorat and Others Vs. Dhondavvabai Hanmanta Thorat and Others, and Jagarlamudi Sujata and another Vs. Jagarlamudi Jadadish Krishna Prasad and others, for the preposition that the children borne of marriage which is void under the Act, 1955 can only according to Section 16 of the Act claim share in the separate property of the parents and not in the coparcenary property. He also relied upon Perumal Gounder and another Vs. Pachayappan and others, for the same proposition and also to show that marrying second wife during the subsistence of first valid marriage, the marriage is void under Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 and it continues to be void even under the Hindu Marriage Act, 1955.

9. It requires to be noticed at this juncture that when actually the marriage of Mahalakshmi was performed with the respondent No. 3-Narsingrao and whether the said marriage is valid or not and the status of the revision petitioners, who born out of the said marriage are the questions can be determined only basing on the evidence which the parties will adduce before the learned trial Court in the course of trial. Clause 1 of Section 5 of the Hindu Marriage Act, 1955 lays down that neither party must have a spouse living at the time of the marriage. The second marriage according to Sections 11 and 17 of the Hindu Marriage Act during the subsistence of the marriage with the first wife is void ab initio if the said marriage is performed after coming into the force of Hindu Marriage Act, 1955. If the marriage is solemnized before the commencement of the Hindu Marriage Act its validity has to be decided having regard to the issues viz. in which year the marriage was actually performed, the previous law governing the solemnization of marriages between Hindus before the commencement of the Act, 1955 and the like. Therefore, in my view, it was premature on the part of the leaned trial Court to arrive at a conclusion, without there being any evidence that the marriage is void.

10. From the averments of the plaint as well as the contents of the written statement filed by the third respondent it would appear that the property was acquired by the third respondent under a partition among his father Padala Jaganatha Naidu @ Chittibabu and his five sons including the third respondent. It

is clearly mentioned in the plaint that the entire properties were partitioned by metes and bounds. The third respondent also mentioned in his written statement that he gifted away Item No. 7 of the plaint schedule house to his daughter Anuradha under a registered Gift Deed and he claims that item No. 7 of the plaint schedule property is his absolute property. Similarly, he purchased item No. 9 of the plaint schedule properties with his own money and he sold away the said property at the time of performing the marriage of his daughter Anuradha to meet the marriage expenses. Thus in the written statement filed by the respondent No. 3, he claimed only some properties as self-acquired properties.

11. The Hon'ble Supreme Court in Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, , Yudhishter Vs. Ashok Kumar, , Commissioner of Income Tax v. P.L. Karuppan Chettiar 1993 SUPP.(1) SCC 580 and Bhanwar Singh Vs. Puran and Others, and as a matter of fact in a catena of decisions, held that "when the surviving members of the coparcenary had already partitioned their properties and become owners to the extent of their share, the property ceases to be joint family property and all the succeeding heirs succeed to their respective shares not as a joint tenants but as tenants-in-common. The property devolves upon them not per stirpes but per capita with the right to alienate the share, particularly when the property has been partitioned and entries made in the revenue record of rights. The property, which devolved u/s 8 of the Hindu Succession Act, 1956 would not be HUF in his hand viz-a-vis his own son, if that be the position then the property which devolving upon the father of the respondents on the demise of his grand father could not be said to be HUF property".

12. Therefore, in the instant case, there is any amount of fore in the contention urged by the revision petitioners that the schedule mentioned property could only be regarded as the self acquired property of the third respondent. If basing on the evidence, the contention of the revision petitioners is accepted and the schedule mentioned property is considered as self acquired property of the third respondent, the respondents 1 and 2 have also no right, during the lifetime of the third respondent to claim any share in the said property and thus, the suit filed by them for partition of the schedule mentioned properties itself would not be maintainable. The third respondent in his written statement specifically contended that all the parties to the suit are entitled for 1/7th share each in the schedule mentioned properties and the said contention putforth by the third respondent supports the version of the revision petitioners. The revision petitioners, therefore, apart from claiming share in the schedule mentioned properties also are entitled to question the very maintainability of the suit basing on the averments of the plaint and the written statement of the third respondent on the ground that the schedule mentioned properties are self acquired properties of the third respondent, not liable for partition during his life time. Therefore, all the above mentioned questions have to be addressed comprehensively in the course of the trial before the trial Court and it is not just possible to decide at the threshold that the revision petitioners have no

locustandi to file the petition under Order 1 Rule 10(2) CPC and that the petition to implead them as parties is not maintainable.

13. Order 1 Rule 10(2) C.P.C. confers a wide discretion on the court to implead or strike out parties at any stage of the proceedings. The Court exercises the discretion to implead a party if it thinks such party's presence is necessary for enabling it effectively and completely adjudicating upon and determine all the questions involved in the suit. The object therefore, is to settle all the controversial issues without driving the parties to multiplicity of litigation.

14. In the instant case, all the controversial issues cannot be addressed and conclusively determined without the presence of the revision petitioners. Any adjudication without their presence would be incomplete, and the parties to the suit and the proposed parties (revision petitioners) will have to face another round of litigation. If the revision petitioners do not have a semblance of right, the trial Court would be justified in rejecting their petition for impleadment. But they have contentions issues, in relation to the subject matter of litigation to be sorted out with the respondents/plaintiffs. Their interest in the subject matter being substantial, the rejection of their application for impleadment, by the learned trial Court seems to be erroneous and the order impugned is not inconsonance with the legislative purpose behind Sub Rule (2) of Rule 10 of Order 10 C.P.C.

15. Since prima facie, the revision petitioners have right and interest in the property and are entitled to resist the suit of the respondents 1 and 2 basing on their legal right, the learned trial court is not justified in prejudicing the issues which have to be adjudicated basing on the evidence let in by both the parties at the trial. For all these reasons, the order dated 23.07.2007 passed by the Senior Civil Judge, Rajam in I.A. No. 384 of 2006 in O.S. No. 41 of 2006 is set aside. The revision petitioners are impleaded as defendants in the suit. The respondents 1 and 2 (plaintiffs) are directed to carry out necessary amendment in the plaint and the trial Court is directed to proceed with the trial of the suit after affording opportunity to the revision petitioners to file written statement and contest the suit.

16. Accordingly, the revision is allowed. There shall be no order as to costs.