
(2014) 03 AP CK 0192

In the Andhra Pradesh High Court

Case No : Second Appeal No. 815 of 2013

Palakayala Bhulakshmi

APPELLANT

Vs

Yarragopula Murahari Rao

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Partition Act, 1893 — Section 4

Citation : (2015) 1 ALD 105

Hon'ble Judges : L.N. Reddy, J

Bench : Single Bench

Advocate : S.S.N. Moorthy, Advocate for the Appellant; T.V. Sridevi, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—The plaintiff in O.S. No. 1938 of 2006 on the file of the II Additional Junior Civil Judge, Guntur is the appellant. The suit was initially filed against 4 defendants i.e. respondents 1 to 5 herein, for partition and separate possession of the suit schedule property being a house constructed in an area of 106 sq yds in Ward No. 21, Block No. 7, T.S. No. 482 of the Guntur Municipal Corporation. Later on, defendant Nos. 5 to 8 i.e., respondent Nos. 1 and 6 to 8 were added as parties.

2. It was pleaded that the suit schedule property was owned by the mother of the appellant and the respondents herein, by name Y. Anasuyamma, and she executed a Will, dated 15.09.2000 in favour of the appellant and her three sisters i.e., respondent Nos. 2 to 4 herein. The suit was mainly contested by the 1st respondent i.e., 5th defendant therein. He admitted that the property was owned by their mother Y. Anasuyamma. However, he pleaded that the property was bequeathed to him under Will, dated 29.01.2000.

3. Through its judgment dated 29.11.2011, the trial Court passed a preliminary decree directing that the suit schedule property be divided into 9 equal shares, and one share each be allotted to the plaintiffs and to defendant Nos. 1 to 8.

4. The preliminary decree passed by the trial Court was questioned by the 1st respondent by filing A.S. No. 1 of 2012 in the Court of the District Judge, Guntur. The appeal was allowed and the preliminary decree was set aside mainly on the ground that the suit was filed on the basis of a Will, whereas, the decree was passed by treating the suit schedule property as an item held by coparcener. Hence, this Second appeal.

5. Heard the learned counsel for the appellant and learned counsel for contesting respondents.

6. Though the suit was filed for partition, it was on the strength of a Will, but not on the basis of succession. The resistance of the suit was also on the basis of another Will.

7. The trial Court framed the following issues for its consideration:

1). Whether the will Dt. 15-09-2000 executed by Y. Anasuyamma in favour of plaintiff and others is true and valid?

2). Whether the Will Dt. 21-09-2000 executed by Y. Anasuyamma in favour of defendant No. 5 is true and valid?

3). Whether the Wife of defendant No. 5 Sarojini is necessary and proper party to the suit?

4). Whether the plaintiff is entitled to Preliminary decree for partition of suit schedule property into 5 equal shares and delivery of one such share as prayed for?

5). To what relief?

8. On behalf of the appellants, P.Ws. 1 to 3 were examined and Exs. A1 to A3 were filed. On behalf of the contesting respondents, D.Ws. 1 and 2 were examined and Exs. B1 to B6 were filed.

9. The Preliminary decree as mentioned above was passed.

10. In A.S. No. 1 of 2012 the lower appellate Court framed the following points for its consideration:

1). Whether the will Dt. 15-09-2000 executed "by Y. Anasuyamma in favour of plaintiff and others is true and valid?

2). Whether the Will Dt. 21-09-2000 executed by Y. Anasuyamma in favour of defendant No. 5 is true and valid?

3). Whether the Wife of defendant No. 5 Sarojini is necessary and proper party to the suit?

4). Whether the plaintiff is entitled to Preliminary decree for partition of suit schedule property into 5 equal shares and delivery of one such share as prayed for?

5). To what relief?

and the appeal was allowed.

11. On hearing of the learned counsel for the parties, this Court is of the view that a substantial question of law viz., whether it is not competent for a Court, to pass a preliminary decree, if all the coparceners are before it, though the parties claimed rights on the strength of a Will.

12. The pleadings of the suit disclose that Y. Venkateswarlu and his wife Anasuyamma had 4 sons namely Respondent Nos. 1,6,7 and Koteswara Rao, the father of respondent No. 8. The couple had 5 daughters, i.e., the appellant and respondent Nos. 2 to 4, and mother of respondent No. 5. The suit schedule property is said to have been purchased by Anasuyamma, through a sale deed, dated 06.11.1985. It was pleaded in the plaint that she executed a Will, dated 15.09.1981, Ex. A1, bequeathing the property in favour of her four daughters and son of the deceased daughter. On that basis, the relief of partition of the suit schedule property into 5 equal parts was claimed. The written statement to the suit was filed only by the 1st respondent, one of the sons of Anasuyamma and Venakteswarlu. He pleaded that his mother executed a Will, dated 21.08.2001, Ex. B1, bequeathing the suit property exclusively in his favour. He has also stated that when some of his brothers were trying to interfere with his possession, he filed O.S. No. 2431 of 2005 in the Court of the V Additional Senior Civil Judge, Guntur for partition. The present suit was said to have been filed as a counterblast.

13. On examining the pleadings and evidence, the trial Court held that neither Ex. A1 nor Ex. B1 are proved. Since the suit was filed for partition and almost all the coparceners were before it, the Court proceeded to pass a preliminary decree. In A.S. No. 1 of 2002 filed by the 1st respondent, the lower appellate Court took the view that the trial Court travelled beyond the scope of the suit.

14. It has already been mentioned that the very relief claimed in the suit was for partition and separate possession of the property. It is a different matter that the basis for partition was a Will. In a suit for partition, hardly there exists any distinction between the plaintiff and the defendant. No finality can be attached to the items of property, or for that matter, the persons entitled to share it. Even at the stage of final decree proceedings, new items of properties can be added or persons, who are otherwise entitled to share, can be impleaded. It is not as if the suit was filed for the relief of declaration of title or injunction, and the trial Court passed preliminary decree therein. Therefore, the view taken by the lower appellate Court is erroneous.

15. On behalf of the 1st respondent, it is pleaded that division of the only item of suit schedule would lead to several complications and that there are items, jointly held by the parties. It is not in dispute that the item of property, which is the subject matter of these proceedings, did not figure as an item in the other suit. Added to that, there is no overlapping of properties in both the suits. If in

addition to the property, which is the subject matter of these proceedings, there exist any other items, the parties can certainly pursue the remedies in the pending or impending suits.

16. Hence, Second Appeal is allowed and the decree passed in A.S. No. 1 of 2002, are set aside. As a result, the preliminary decree passed by the trial Court, would remain in force. It is however directed that the trial Court shall follow the procedure prescribed u/s 4 of the Partition Act, in the matter of division of the suit schedule property, unless, one of them, is prepared to retain it by paying the consideration, to the satisfaction of other parties, and that the preliminary decree in O.S No. 1938 of 2006 shall be without prejudice to the rights of the parties to seek partition of other properties, if any. There shall be no order as to costs.

17. Miscellaneous petitions, if any, filed in this appeal, shall also stand closed.