
(1999) 07 AP CK 0024

In the Andhra Pradesh High Court

Case No : Tr. A.S. No. 464 of 1986 and A.S. No. 1690 of 1985

Peethal Srinivasa Rao

APPELLANT

Vs

Kusuma Peddi Raju and Others

RESPONDENT

Date of Decision : 05-07-1999

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1)

Citation : (1999) 2 APLJ 126 : (1999) 2 DMC 762

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : P.V. Sessaiah, for the Appellant; C.C.S. Sastry, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—These two appeals arise out of the common judgment in O.S. Nos. 4 and 5 of 1980 dated 29th March, 1985 on the file of the Subordinate Judge, Bhimavaram. O.S. No. 4 of 1980 was originally filed by Kusuma Krishnaiah against Chilakapati Gangamma, seeking partition of the schedule properties into two equal shares. Pending the suit, both the plaintiff and defendant died and the appellant was brought on record as the legal representative of the defendant and the respondents 1 to 3 as the legal representatives of the plaintiff. Similarly, O.S. No. 5 of 1980 was filed by Chilakapati Gangamma against Kusuma Krishnaiah seeking a declaration of her right and for recovery of possession of the suit land. On the similar lines as in O.S. No. 4 of 1980, the parties having died, the legal representatives were brought on record.

2. The claim of the plaintiff in O.S. No. 4 of 1980 is that the schedule properties belonged to late Chilakapati Surayya, s/o Swamy, who executed a registered Will Deed dated 6.4.1958 in a sound and disposing state of mind and subsequently, he died on 18.7.1969. The original plaintiff is the sister's son and defendant No. 1 is the wife's sister's son of late Surayya and defendant No. 2 is the wife of Surayya. The properties being in joint possession and some attempts being made to secrete away, the suit was filed for partition.

3. Defendant No. 1 in the written statement claimed that he was adopted by the defendant No. 2 and late Surayya when he was a child and thus known as the adopted son of late Surayya and defendant No. 2. Surayya and the defendants are the members of the joint family and during the life-time of Surayya itself some properties were given to the plaintiff like bullock-cart and bullocks, etc., after acknowledgement. However, by the date of the death of Surayya, none of those were existing. Since the defendant No. 2 has a right of maintenance in the scheduled properties, the Will Deed dated 6.4.1958 contemplates that the plaintiff and the defendant No. 1 should enjoy the properties only after the death of Gangamma. Therefore, the rights of Gangamma in the properties have become enlarged and she became the absolute owner of those properties. She executed a Will Deed on 5.5.1972 bequeathing the properties to defendant No. 1.

4. The defendant No. 2 claimed that the first defendant was adopted by her and her husband long back and the Will Deed was executed on 6.4.1958 in a sound and disposing state of mind and it comes into operation only after the death of the second defendant. Therefore, the claim of the plaintiff that soon after the death of Surayya, he became entitled to the properties is not correct and no right vests during the life-time of the second defendant. Late Surayya had already given some properties like bullock-cart, bulls, etc., to the plaintiff and defendant No. 1 and the scheduled properties were not in possession of Surayya by the time of his death especially, items 1 to 3, 6, 10, 12 to 17. Later on, the second plaintiff filed a rejoinder denying the allegations made in the written statements and claimed that whatever properties of Surayya are there, those devolved equally on the first plaintiff and defendant Nos. 1 and 2 did not acquire any rights in the properties and no life interest is created under the Will. The second Will dated 5.5.1972 was denied as the second defendant was not in a sound and disposing state of mind as she was suffering from paralysis, bed-ridden and in coma.

5. The claim as made in O.S. No. 5 of 1980 by Chilakapati Gangamma almost runs on the self-same lines as alleged in the written statements filed in O.S. No. 4 of 1980. It was reiterated that as per the Will Deed, the rights were enlarged into absolute one as per Section 14(1) of the Hindu Succession Act as she had the right of maintenance over the properties. Therefore, the Will executed by Surayya does not become operative. Since the defendant therein did not accede to the request of her's to give the crops or their value to the first plaintiff, it resulted in issuing of notice dated 6.10.1969 which was falsely got replied on 1.11.1969. Therefore, the relief was for declaration and possession.

6. The defendant therein reiterated the same claim as made in the plaint in O.S. No. 4 of 1980. It was claimed that during the life-time of Surayya, an extent of Ac. 5.59 cents were divided into two equal shares and the maktha was received by him during his life-time. After his death, the said division was confirmed with the consent of the plaintiff, who was only a life estate holder and she leased the properties to the defendant on maktha of 15 bags without any

share for the landlord. The plaintiff has, thus, no right and the suit is not maintainable since the plaintiff had to approach the tenancy Courts and, therefore, requested for the dismissal of the suit.

7. The defendant No. 2 therein has claimed that Srinivas Rao is not the adopted son of Surayya and during the life-time of Surayya itself, an extent of Ac. 5.59 cents was divided into two equal shares and given to Srinivas Rao and himself which was subsequently confirmed. Defendant No. 2 purchased Ac. 0-29 cents in R.S. No. 201/4 for valid consideration and as defendant No. 1 has got a vested remainder in the properties, the properties are in the hands of defendant No. 1 and the defendant No. 2 is not in possession. Hence, he sought for dismissal of the suit. However, an additional written statement was filed by the first defendant stating that the deceased first plaintiff had only life interest and vested remainder to the defendant and since she died during the pendency of the suit, it came to an end and as such the relief of possession has become infructuous and the suit is liable to be dismissed. The execution of the Will dated 5.5.1972 was denied and it is alleged that in view of the illness, Gangamma could not have executed the said Will and that it is a forged one.

8. The third defendant filed an additional written statement stating that the first plaintiff during her life-time never made any claim as to the absolute rights in the suit lands which are only the self-acquired property of Chilakapati Surayya. During his life-time, he divided the properties into two equal shares. The claim that the rights of the first plaintiff became enlarged into an absolute estate is denied. Late Surayya had already purchased Ac. 0.60 cents and Ac. 1.90 cents in the names of the first plaintiff with his monies towards her maintenance and, therefore, the question of any property being given towards maintenance or any vesting as such does not arise and late Surayya was under no obligation to provide any separate maintenance to the first plaintiff. The Will dated 5.5.1972 is a forged one.

9. Initially, in both the suits, different issues were framed but, subsequently, it appears that on a joint memo filed by both the sides, the evidence was recorded in O.S. No. 4 of 1980 and both the suits were clubbed together.

10. For the sake of convenience, the Trial Court has recast the issues in both the suits after hearing the arguments, which are as under :

" (1) Whether the adoption of Chilakapati Srinivasa Rao by late Chilakapati Surayya and Gangamma is true and valid and, if so, whether the registered Will Deed dated 6.4.1958 is not valid on the ground that it was executed by a member of joint family ?

(2) Whether the plaint schedule property in O.S. No. 5 of 1980 became the absolute property of the 1st plaintiff u/s 14(1) of Hindu Succession Act as per the Will set up by the defendant ?

(3) Whether all or any of the plaint schedule movables are in existence and what

are their values ?

(4) Whether late Gangamma executed a Will dated 5.5.1972 in a sound and disposing state of mind and whether, D-I in O.S. No. 4/80 and the 2nd plaintiff in O.S. No. 5 of 1980 is entitled to recover the properties mentioned in the plaint schedule in O.S. No. 5 of 1980 ?

(5) Whether D-I in O.S. No. 5/80 was a tenant of the suit land in that suit?

(6) To what relief ?"

11. The plaintiff had examined P.Ws. 1 to 3 and defendants examined D.Ws. 1 to 5 and marked Exs. A-1 to A-4 and B-1 to B-5 respectively. The Trial Court on a consideration of the evidence on record has decreed the suit O.S. No. 4 of 1980 and dismissed O.S. No. 5 of 1980 holding that the adoption of Chilakapati Srinivasa Rao is not true and the same is not established and the registered Will Deed dated 6.4.1958 in Ex. B-1 is valid and the properties bequeathed thereunder are the exclusive properties of the late Surayya and further holding that late Gangamma had no right u/s 14 of the Hindu Succession Act as the intention of the testator was only that the legatees should divide the properties after his death and Gangamma was never given any right over these properties.

12. In these appeals, the learned Counsel appearing for the appellant, attacking the findings of the Trial Court, contended that the lower Court has erroneously held that there was no adoption and the non-applicability of Section 14 of the Hindu Succession Act. The learned Counsel has pointed out that the rejection of adoption on the ground that it was an inter-caste one is unwarranted. The mother being not a Christian, there is no bar for adoption and the parties being Sudras, there is no requirement of ceremonies. Further, that the very adoption being an ancient one as D.W. 1 was hardly aged 3 or 4 years, it is not possible to get any evidence and the evidence of D.W. 5 has been erroneously brushed aside. Stress was laid on Exs. B-2 and B-4 dated 2.3.1955 and 3.10.1953 respectively which were marked through D.W. 1, which are sale deeds wherein the appellant was described as the adopted son and the said documents being sufficiently old and the long silence thereafter create an estoppel and, therefore, a presumption has to be drawn in favour of the adoption. He sought to rely on the decision in Voleti Venkata Rama Rao Vs. Kasapragada Bhaskar Rao and Others, , and L. Debi Prasad (Dead) by Lrs. Vs. Tribeni Devi and Others, .

13. On the question of applicability of Section 14 of the Hindu Succession Act, it was argued that the mother had a right of maintenance and as such the life estate given under Ex. B-1 had enlarged into an absolute estate under the said provision and, the Will dated 5.5.1972 in Ex. B-5 is perfectly valid and correct.

14. Mr. C.C.S. Sastry, learned Counsel appearing on behalf of the respondent therein, contended that Gangamma had no pre-existing right of maintenance and Ex. B-1 only postpones the vesting and she having already been provided with the properties under Exs. A-3 and A-4, late Surayya is not under an

obligation to maintain her. Further the claim u/s 14 of the Hindu Succession Act is inconsistent as the original defendant has not taken any such plea in the written statement but subsequently the legal representatives have sought to incorporate the same which runs contrary to the plea already taken by the deceased. The mere expressions shown in Exs. B-2 and B-4 to which the respondents not being a party would not confer any right unless a right as such exists and is proved. Admittedly, the father of the appellant was a Christian and, therefore, there could not have been any such adoption between a Hindu and a Christian, which is contrary to the well established principles under the Hindu Law. ,

15. In view of the above rival contentions, the questions which fall for consideration in these appeals are :

"(1) Whether Srinivasa Rao is the adopted son of late Surayya and Gangamma ? and

(2) Whether under Ex. B-I dated 6.4.1958, Gangamma is vested with any absolute estate ?

Re. (1):

16. Both the Counsels have taken me through the entire evidence and the documents on record. As regards the question of adoption of the appellant herein, the only evidence available on record is that of D.Ws. 1, 2 and 5 and the documents in Exs. B-2 and B-4. D.W. 1 is the defendant No. 1 in O.S. No. 4 of 1980 and plaintiff No. 2 in O.S. No. 5 of 1980 and who, admittedly, was too young to remember any facts or throw any light as such on the question of adoption. D.W. 2 though sought to state that the appellant is the adopted son, he pleaded total ignorance as to the date of adoption, the date of the death of Surayya and Gangamma and from his cross-examination, it does not throw any light to show that really D.W. 2 is having any personal acquaintance with the family and that he was a witness to any such adoption. The evidence of D.W. 5 does not specify on the ceremonies or the formalities observed. In the absence of such positive evidence, it is very difficult to sustain the claim of adoption, and irrespective of the fact whether there was really any such inter-caste adoption or not, it may not have relevance as long as the very factum of adoption is proved. It is well settled that normally a child's caste or religion goes with that of his father. However, in this case, the factum of adoption through ceremonies as mandatorily required under the Hindu Law or any customary procedure or other formalities having not been properly established, it cannot be said that the appellant is the adopted son of Chilakapati Surayya. The principles laid down in Venkata Rama Rao's case (supra) and Debi Prasad's case (supra) regarding presumption would not arise in this case as basically there is no evidence of the factum of adoption and there is no basis for drawing any such presumption.

Re. (2): 17. The other question centres around the much canvassed plea u/s 14 of the Hindu Succession Act and which totally surrounds around Ex. B-I dated

6.4.1958. A reading of Ex. B-I shows that late Surayya has bequeathed the properties equally in favour of both Chilakapati Srinivasa Rao and Krishnaiah. However, it was specifically added that the same would be enjoyed only after his death and the death of his wife Gangamma. Prima facie, this would show that nothing was sought to be given in any form whatsoever - towards either life estate or otherwise or maintenance - to Gangamma. However, in Ex. B-I, the portion where it was written in Telugu that "xxx xxx xxx" was struck off again by pen which specifically contemplates for the maintenance of Gangamma. If the said recital is taken on its face value by taking note of the deleted portion, it shows that the bequest is not for maintenance nor any such intention was really made. This itself would suffice to reject plea u/s 14(1) of the Hindu Succession Act. The said Will was executed on 6.4.1958 and Surayya died on 18.7.1969. The plaintiff No. 1 and defendant No. 1 are not strangers to the family - the plaintiff No. 1 being the sister's son and the defendant No. 1 being the wife's sister's son of Surayya. Apparently, the couple i.e., Surayya and Gangamma had no issues and these boys being very close to both of them, the said bequest was done only by giving effect thereto after the death of both of them. Even though it was sought to be contested that a life interest was created in favour of Gangamma making a provision for her maintenance and, therefore, the said right gets enlarged into an absolute one u/s 14(1), the totality of the circumstances, the relationship of the parties and the expressions used in the very document and more so the deleted portion, would amply show that there was no such intention and the giving effect to was only postponed till the death of both of them. This conclusion further gets support in view of the fact that Gangamma has been given certain properties under Exs. A-3 and A-4 towards her maintenance. All along and after the date of the document both Surayya and Gangamma lived together without any complaints of whatsoever nature, therefore there is no obligation on the part of Surayya to maintain Gangamma. Gangamma died during the pendency of the proceedings and the present dispute is only between the two legatees under Ex. B-I. As evident from the very pleadings, the plea of enlargement of estate was sought to be taken at a very belated stage by the appellant hereinafter he was added as the legal representative, which would go to show that it was pressed into service only to get the properties and thus the existence of the Will Deed of Gangamma was being pleaded. Therefore, in view of the fact that Gangamma had no right as such, it is not necessary to go into the validity or correctness of the Will Deed executed by her in Ex. B-5. The principles as enunciated in *V. Tulasamma v. V. Sesha Reddi* AIR 1977 SC 1944, do not support the claim of the appellant as regards the enlargement of the estate.

18. In view of the above reasons, it has to be held that Gangamma did not get any absolute estate u/s 14(1) of the Hindu Succession Act as such.

19. Thus, there are no merits in both the appeals and the same are dismissed. However, in the circumstances, there will be no order as to costs.