
(2013) 11 AP CK 0086
In the Andhra Pradesh High Court
Case No : L.P.A. No. 183 of 2001

Sangavarapu Rukminidevi	Vs	APPELLANT
Sangavarapu Venkata Subbaiah and Others		RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 2 ALD 562 : (2014) 4 ALT 463

Hon'ble Judges : M.S.K. Jaiswal, J; L. Narasimha Reddy, J

Bench : Division Bench

Advocate : G. Pedda Babu, for the Appellant; M.V.S. Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This Letters Patent Appeal is filed against the judgment and decree dated 11-04-1997 passed by a learned single Judge of this Court in A.S. No. 787 of 1983. That appeal, in turn, was filed against the judgment and decree dated 16-11-1981 passed by the Court of Additional Subordinate Judge, Ongole in O.S. No. 56 of 1973. The 6th defendant in the suit is the appellant herein. The facts, that gave rise to the filing of this Letters Patent Appeal, in brief, are as under:

2. For the sake of convenience, the parties are referred to, as arrayed in the suit.
3. The plaintiff (1st respondent herein) claiming to be the adopted son of one, Sri Sangavarapu Subrahmanyam, filed the suit for partition and separate possession of the suit schedule properties. He pleaded that his adoptive father, the 1st defendant, is possessed of various items of ancestral properties and that in spite of his repeated demands, he did not effect partition. Four tenants of the properties were impleaded as defendants 2 to 5 in the suit. During the pendency of the suit, the 1st defendant died. Therefore, the plaintiff got the suit amended to be the one, for mere recovery of possession of the suit schedule properties, since the necessity for partition ceased to exist.

4. After the plaintiff took that step, Smt. Rukmini Devi (appellant herein) got herself impleaded as defendant No. 6, claiming to be the second wife of Subrahmanyam. She has also pleaded that Subrahmanyam executed a deed of settlement (Ex. B-9) in her favour in respect of Ac. 7.55 cents of land of "A" schedule. It was also her case that Subrahmanyam executed a Will, (Ex. B-16), dated 26-07-1963, in her favour, bequeathing his properties.

5. The claim of the 6th defendant was opposed by the plaintiff. According to him, his adoptive mother predeceased his adoptive father, and there not being any other legal heirs, he became the absolute owner of the entire properties held by the erstwhile joint family.

6. Through its judgment dated 16-11-1981, the trial Court held that the alleged marriage between D-1 and D-6 is void on the ground that D-6 had a subsisting marriage with another man, by the time she is said to have married D-1. However, the deed of settlement, which was marked as Ex. B-9, was found to be valid.

7. Plaintiff filed A.S. No. 787 of 1983, feeling aggrieved by the decree passed by the trial Court, in relation to Ex. B-9. A learned single Judge of this Court, through judgment 11-04-1997, held the marriage between D-1 and D-6 valid, but Ex. B-9 as void. Accordingly, a preliminary decree was passed allotting 1/4th share of the suit schedule properties in favour of defendant No. 6.

8. This appeal, under Clause 15 of the Letters Patent, is preferred by the 6th defendant, Rukmini Devi. She has not only challenged the very adoption of the plaintiff, but also the findings in A.S. No. 787 of 1983, about Ex. B-9.

9. During the pendency of the L.P.A., the 6th defendant died. Claiming to be a legatee of the 6th defendant, one Smt. Jampani Koteswaramma, w/o. Venkata Maheswara Rao, filed an application, to implead her as legal representative of the 6th defendant. Her claim is based upon a Will, said to have been executed by the 6th defendant, on 30-06-2003. The application was opposed by the plaintiff. He pleaded that the so-called Will is a fabricated one. Thereupon, this Court directed the trial Court to record a finding on the Will, dated 30-06-2003, after taking into account, the oral and documentary evidence, that may be adduced by the parties. Through its order dated 23-01-2012, the trial Court forwarded a finding holding that the Will, dated 30-06-2003 (marked as Ex. A-1 in those proceedings), pleaded by the proposed legal representative is proved. Objections are filed by the plaintiff to the said finding.

10. Sri G. Pedda Babu learned counsel for the 6th defendant submits that his client was married to Subrahmanyam and though the trial Court took the view that the marriage was void, the learned single Judge of this Court held it to be valid. He contends that the learned single Judge, however, erred in taking the view that Ex. B-9, the settlement deed, is not valid. According to him, Ex. B-9 was proved, as required under law, and there was no basis for the finding of the learned single Judge on that document. He further submits that the finding of the

learned single Judge on Ex. B-16, the Will executed by Subrahmanyam in favour of defendant No. 6 cannot be sustained in law.

11. Learned counsel further submits that the 6th defendant executed a Will, Ex. B-9, in favour of his client, and that the trial Court has recorded a finding to the effect that the said Will is valid and that the entire suit deserves to be dismissed. He submits that the very adoption pleaded by the plaintiff cannot be said to have been proved and the suit itself became untenable.

12. Sri M.V.S. Suresh Kumar, learned counsel for the plaintiff, on the other hand, submits that with the death of the 1st defendant, the necessity for the plaintiff to seek the relief of partition ceased to exist, and at that stage, the 6th defendant entered the scene, claiming to be the second wife of the 1st defendant. He contends that the trial Court recorded a categorical finding that the alleged marriage of the 6th defendant with the 1st defendant was void. He submits that though the judgment rendered in the appeal is in favour of the plaintiff, the issue pertaining to the alleged marriage of the 6th defendant, with the 1st defendant, recorded by the learned single Judge; has absolutely no basis. Learned counsel submits that the categorical admissions made by the 6th defendant, that her husband was one Mr. Anantha Ramaiah, was ignored by the learned single Judge as, of no consequence.

13. He further submits that the findings in the appeal, on Exs. B-9 and B-16 are based on sound and well established principles of law enunciated by the Supreme Court and the same cannot be assailed at all. He further submits that the finding recorded by the trial Court on the Will, Ex. B-9, said to have been executed by the 6th defendant, is totally untenable. He contends that if one reads the alleged Will, Ex. B-9, and the depositions of the alleged legatee, by name, Koteswaramma, it becomes clear that the document was concocted. He submits that while according to the Will, Ex. B-9, the legatee was serving the testator for about 20 years, the deposition of the legatee is just otherwise. He submits that while in the Will, Ex. B-9, it was mentioned that the legatee was looking after for the past 20 years and serving her by giving medicines etc., the legatee stated that she came to know about the ailment of the testator, i.e. defendant No. 6, just 10 days prior to her death. He further submits that the manner in which the alleged Will, Ex. B-9 surfaced, makes it clear that it is a concocted document.

14. The suit was initially filed for the relief of partition, and on the death of defendant No. 1, it was modified to the one of recovery of possession against defendants 2 to 5.

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

- 1) Whether the plaintiff's adoption is true and valid?
- 2) Whether the plaint schedules are correct?
- 3) What are the properties liable for partition?

4) Whether the court has got territorial jurisdiction?

5) Whether the plaintiff is in joint possession of the schedule properties, if not whether the valuation and Court fee paid are correct?

16. On behalf of the plaintiff, P.Ws. 1 to 11 were examined and Exs. A-1 to 22 were filed. On behalf of the defendants, D.Ws. 1 to 7 were examined and Exs. B-1 to B-56 were filed. In addition to that, Exs. C-1 and C-2 and Exs. X-1 to X-16 were filed. The suit was decreed, but with a rider. In A.S. No. 787 of 1983, the learned single Judge did not frame any point. The nature of disposal given to the appeal has already been stated.

17. The points that arise for consideration in this appeal are, as to,

1) whether Ex. B-9, the gift settlement deed, said to have been executed by the 1st defendant, in favour of the 6th defendant, is valid.

2) Whether the Will dated 30-06-2003, marked as Ex. A-1 is true and valid.

18. The suit was initially filed for the relief of partition and separate possession of the suit schedule properties. The plaintiff pleaded that he is the adopted son of the 1st defendant. Defendants 2 to 5 were tenants. The adoptive mother predeceased defendant No. 1. With the death of the defendant No. 1, during the pendency of the suit, the necessity to seek partition ceased. At that stage, the 6th defendant stepped in, claiming to be the second wife of the deceased, defendant No. 1. Though there was serious contest by the 6th defendant, not only based upon her alleged relation with defendant No. 1, but also under Ex. B-9, the gift settlement deed, and a Will, Ex. B-16, with her death, issueless, during the pendency of the LPA, the dispute has assumed an altogether different character. Left to herself, she did not claim any share in the property. She rested her claim on Exs. B-9 and B-16.

19. The trial Court took the view that Ex. B-16 is not proved. A learned single Judge of this Court held that the execution of the Will, Ex. B-16, cannot be believed, since the same person has executed the gift settlement deed, i.e. Ex. B-9, in respect of the same property, and in favour of the same individual. No serious contest is offered as regards the finding in respect of Ex. B-16. Therefore, no point is framed on that.

20. Under Ex. B-9, the 1st defendant is said to have settled certain items of immovable property, in favour of the 6th defendant. Since the adoption of the plaintiff by the 1st defendant was held proved by the trial Court as well as the learned single Judge of this Court, the result would be that there existed a Hindu joint family, comprising of the 1st defendant and the plaintiff. No partition has taken place, by the time Ex. B-9 was executed. Though certain items were mentioned in Ex. B-9, at the most they constitute the undivided share of defendant No. 1.

21. The learned single Judge of this Court has taken note of the principles

enunciated by the Supreme Court in *Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma Rattamma and Others*, and *Dwarampudi Nagaratnamba Vs. Kunuku Ramayya and Another*, , and held that a Hindu coparcener is not entitled to make a gift of his/her undivided share. The effort made on behalf of the 6th defendant, to plead that division of the status can be presumed; was correctly repelled. When the 1st defendant did not entertain any idea of joint family, much less of partition, it is difficult to attribute that to him. We, therefore, hold that the finding of the learned single Judge, that Ex. B-9 is not valid; does not warrant interference.

22. Now, it needs to be seen as to whether the Will, Ex. A-1, dated 30-06-2003 is validly proved by the legatees, claiming under it. In case the finding of the trial Court as to the Will, Ex. A-1, dated 30-06-2003 is approved, the proposed legal representative would step into the shoes of the 6th defendant, and she would be entitled to canvas all the points, that were urged by the executant of the Will. If, on the other hand, the finding of the trial Court is not accepted, the entire proceedings become superfluous, reason being that there would not be any opposition to the exclusive rights claimed by the plaintiff, vis-?-vis the property.

23. Ex. A-1, the Will, did not make any reference to Ex. B-9, nor to Ex. B-16. It proceeds as though the 6th defendant became the owner of the property, on account of her being wife of defendant No. 1. Though she became a party to the proceedings, initiated by the plaintiff, and the LPA preferred by her was very much pending before this Court, she did not make any reference to that. It was not mentioned that either any partition has taken place between the 6th defendant and the plaintiff, nor any mention was made, as to how the property had accrued to her.

24. It is important to note that though no specific reference was made to Ex. B-9, in Ex. A-1, ultimately the bequest under Ex. A-1 is of the properties covered by Ex. B-9. Once it is held that Ex. B-9 is not valid and is inoperative in law, the very foundation for Ex. A-1 ceases to exist.

25. Be that as it may, let us proceed as though the 6th defendant has absolute rights over the property. Then the question would be as to whether Ex. A-1 is proved, as required under law.

26. It is fairly well established and bears repetition that not only the execution of a Will must be proved, as required under law, but also the suspicious circumstances, surrounding it, must be explained. Ex. A-1 is said to have been executed by the 6th defendant on 30-06-2003. She died on the next day. It was mentioned in Ex. A-1 that the husband of the 6th defendant died 20 years ago, and being issueless, she was being looked after by the legatee, Koteswaramma and her husband Venkata Maheswara Rao, and they were getting her treated for various ailments. It was also mentioned that all the earlier Wills, executed by the 6th defendant would stand cancelled.

27. To prove the Will, dated 30-06-2003, P.Ws. 1 to 3 were examined before the

trial Court, on a direction issued by this Court. The said Will was filed as Ex. A-1 and the death certificates as Exs. A-2 and A-3 and pattadar passbooks as Exs. A-4 and A-5. P.W.-1 i.e. Koteswaramma in her deposition stated that herself and her husband were looking after the 6th defendant and that she was living in their house. According to her, the 6th defendant herself informed that she executed Ex. A-1 in sound and disposing state of mind and that P.W.-3, and another person, by name Venkateswarlu have attested the Will. It is stated that she was not present at the time of execution of the Will, Ex. A-1, and that the 6th defendant died on 01-07-2003. P.W.-1 is said to have been put in possession of the property and that she was issued pattadar passbooks and title deeds in respect of the land.

28. In the cross-examination, P.W.-1 stated that she does not know the age of the testator, by the time of her death, nor her other particulars. According to her, she came to know about the illness of the 6th defendant just 10 days prior to her death, and that no medicines were given to her, since the cancer was in advanced stage. She admitted that defendant No. 6 was not taken to hospital for treatment and that she came to her Village just 10 days prior to the death. She stated that it was only her husband that was looking after defendant No. 6. She pleaded ignorance about the time of execution of Ex. A-1. The following sentence in the cross-examination, assumes importance.

...I went to the house of the Testator one day prior to her death and she informed me about the Will. I went in the evening to her but I cannot give the exact time when I went to her. But it was in the evening hours. She told me that she executed the Will on the same day. I do not know who drafted the Will. I do not know the names of the witnesses of the Will. The testator herself gave me the Will. I do not remember the exact time when she handed over the Will to me...

29. P.W.-1 is not clear as to where defendant No. 6 was living, before she came to the Village of P.W.-1, 10 days prior to the death.

30. P.W.-2 is said to be one of the attestors. His version is that he was summoned to the Village Degalamudi by defendant No. 6, to act as an attestor, and together with her, and another attestor by name, Yellaiah, and they went to the office of Sub-Registrar at Martur. At one stage, he stated that the husband of P.W.-1 has also signed on the Will.

31. The plaintiff, apart from deposing as P.W.-1 in this set of proceedings, has examined D.W.-3, a Junior Assistant from the Office of Sub-Registrar, Martur, where Ex. A-1 was registered. According to D.W.-3, Ex. A-1 was received by P.W.-1 on the date of execution itself and that she has subscribed her signature in the concerned register. With this, the version of P.W.-1 that she was handed over the document by defendant No. 6 and that she did not go to the office of Sub-Registrar is totally falsified.

32. Apart from the inconsistencies and discrepancies pointed above, the record

discloses that Ex. A-1 was not presented in its entirety and that the pages comprising of the photo of the attester, etc., were not filed. These and other circumstances throw any amount of doubt as to the very execution of the Will, Ex. A-1. The fact that the defendant No. 6 was in the advanced stage of cancer and she died on 01-07-2003, would virtually make it impossible and unimaginable that she was in sound health condition on the preceding day and executed the Will, Ex. A-1, by travelling all the way, to Martur, one day earlier. Her condition was so hopeless that even according to P.W.-1, the treatment was stopped, giving up hopes of recovery. It is not difficult to imagine the condition of a cancer patient, one day before the death. Every possible faculty fails and the person becomes immobile and loses all the senses. Added to that, P.W.-1 was neither related, nor is there anything to establish that defendant No. 6 had any affinity towards her. Except that the name of P.W.-1 figured for the first time in Ex. A-1, there is no other material to suggest any strong reason as to why such valuable property must be bequeathed to her. Therefore, the point No. 2 is answered, holding that Ex. A-1, the Will dated 30-06-2003 is not proved and that the finding recorded by the trial Court is perverse.

33. The appeal is accordingly dismissed. However, if the alleged purchasers from defendant No. 6 intend to work out their remedies, it shall be open to them to do so by instituting separate proceedings. The result of the dismissal of this LPA would be that, the plaintiff shall be the absolute owner of the property, and even if defendant No. 6 had acquired any rights in the joint family properties, they stand devolved upon the plaintiff. The miscellaneous petitions filed in this appeal shall also stand disposed of. There shall be no order as to costs.