
(2005) 07 AP CK 0054
In the Andhra Pradesh High Court
Case No : SA No. 110 of 2002

Singanaboina Mallaiah and Others

APPELLANT

Vs

Singaboina Madhusudhan and Others

RESPONDENT

Date of Decision : 19-07-2005

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 8(2)
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4
Evidence Act, 1872 — Section 114
Transfer of Property Act, 1882 — Section 53

Citation : (2005) 5 ALD 443 : (2005) 6 ALT 152

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M. Krishna Mohan Rao, for the Appellant; P. Shiv Kumar, for the Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Defendant No. 4 and the legal representatives of defendant No. 5, being defendants 9, 10 and 11, in O.S.No. 32 of 1985, on the file of the Court of District Munsif, Kamareddy, filed this second appeal.

2. Respondents 1 to 4 are the plaintiffs. Respondents 5, 6 and 7 are defendants 1 to 3. Respondent No. 8 is defendant No. 6 and respondents 9 and 10 are defendants 7 and 8 respectively. During the pendency of the suit, defendant No. 5 died and his legal representatives defendants 9, 10 and 11 were brought on record. For the sake of convenience, the parties shall be referred to as arrayed in the suit.

3. Plaintiff No. 3 and defendants 1 to 3 are brothers and are sons of late Singanaboina Sivaiah. Plaintiff No. 4 is their mother. Plaintiffs 1 and 2 are sons of defendants 1 and 2 respectively. They filed the suit for the relief of;

(a) declaration that the lands in plaint A schedule are the ancestral property of

the joint family, comprising of plaintiffs and defendants 1 to 3, and for consequential injunction against defendants 4 and 5 from interfering with their possession and enjoyment of the same;

(b) further declaration that the entries in the revenue records from the year 1980-81, till the date of filing of the suit, in respect of the suit schedule property, are null and void and for a direction to cancel the same.

4. It was pleaded that plaint A schedule land (hereinafter referred to as "the suit land"), comprising of about Ac.4-00, was held by their grandfather, late Singanaboina Ramaiah, and after his death, their father, Singanaboina Sivaiah, succeeded to it. It was alleged that their father managed the properties, as kartha of the joint family, upto 2-5-1983, on which date, he passed away, leaving behind him, the plaintiffs and defendants 1 to 3.

5. It is the case of the plaintiffs that defendants 4 and 5 are their distant relatives, and though they had nothing to do with the joint family, at their instance, the revenue records were manipulated from the year 1980-81, to the effect that the 4th defendant, who is the son of the 5th defendant, is the pattadar of the land. It was alleged that no notice was issued to their father, who was alive by that time, before making such alterations in the revenue records. They also pleaded that the revenue records were manipulated, with the collusion between defendants 4 and 5, on the one hand, and defendants 6 to 8, who are officials of the Revenue Department, on the other hand. They urged that the lands are in joint and common possession of the plaintiffs and defendants 1 to 3, and they sought for the relief referred to above.

6. Except defendants 4 and 5, rest of the defendants remained ex parte. In their written statement, defendants 4 and 5 pleaded that the suit land was purchased by defendant No. 5, under an agreement of sale dated 25-3-1965, from late Singanaboina Sivaiah for a consideration of Rs. 6,500/-, and after receiving the entire consideration, Sivaiah delivered possession of the land, and ever since then, they are in possession and enjoyment of the property. They raised objection for the various reliefs, claimed in the suit, and urged that if the plaintiffs are aggrieved by the entries in the revenue records, the only course open to them is to avail the remedy of appeal under the relevant provisions of law. As an additional ground, they pleaded that they are entitled to the protection u/s 53 of the Transfer of Property Act, and that their possession is spread more than 12 years, before filing of the suit. An objection as to Court-fee was also raised.

7. The Trial Court decreed the suit, through its judgment dated 22-11-1995. Aggrieved thereby, defendants 4 and 9 to 11 filed A.S.No. 4 of 1996, before the Court of Additional District Judge, Nizamabad. Through its judgment, dated 10-8-2001, the lower appellate Court dismissed the appeal. Thus arises the second appeal.

8. Sri M. Krishna Mohan Rao, learned Counsel for the appellants, submits that

the suit was not maintainable, since the relief prayed for in it is barred by the provisions of A.P. Rights in Land and Pattadar Pass Book Act, 1971 (for short "the Act"). He submits that if the plaintiffs felt aggrieved by the entries in the revenue records, the only course open to them was to avail the remedy of appeal under that Act. He contends that till such entries are set aside, in accordance with relevant provisions of law, a presumption as to their correctness exists, and the plea of the plaintiffs, as to their possession, cannot be entertained. The learned Counsel further submits that admittedly, late Sivaiah was the kartha of the joint family, and any transactions of sale made by him, are presumed to be for the benefit of the family, and at any rate, the sale cannot be questioned nearly 30 years after it took place. He also urged other contentions, such as, the consequences of the failure of the third plaintiff in filing the suit, within three years, from the date of his attaining majority, absence of any pleading as to fraud against defendants 6 to 8, etc. He has placed reliance upon several judgments rendered by the Supreme Court and various High Courts.

9. Sri P. Siva Kumar, learned Counsel for the respondents, on the other hand, submits that the second appeal is not maintainable against the concurrent finding by both the Courts below, and had relied upon several judgments of the Supreme Court on this aspect. He contends that the bar contained under the Act does not operate, when the very basis for making such entries is in challenge in a suit. He submits that Sivaiah could not have sold or entered into agreement to sell the suit schedule property, since it was an ancestral property, and there did not exist any family necessity for alienating it. He submits that there was any amount of inconsistency, as to the so-called purchase under the agreement of sale, marked as Ex.B.1. The learned Counsel points out that the falsity of Ex.B-1 is evident from the fact that Sivaiah was a literate and capable of putting his signature in writing, whereas, Ex.B-1 contains his thumb impression.

10. The suit was filed for a three-fold relief, viz. (a) declaration of the rights of plaintiffs and defendants 1 to 3 as coparceners, vis-a-vis, suit schedule property, (b) injunction against defendants 4 and 5, and (c) declaration that the entries in the revenue records from 1980-81 onwards are not correct. On the basis of the pleadings before it, the Trial Court framed the following issues and additional issues:

"(1) Whether the plaintiff is entitled for partition and separate possession as prayed for?

(2) Whether the plaintiff is entitled for correction of entries as prayed for?

(3) Whether D-4 and D-5 purchased the suit lands from one Sivaiah, father of plaintiff No. 3 and husband of plaintiff No. 4?

(4) Whether the defendants 4 and 5 have perfected title?

(5) Whether the suit is maintainable against D-6 to D-8?

(6) To what relief ?

Additional Issues:

- (1) Whether the suit is properly valued?
- (2) Whether the suit is bad for non-inclusion of all the properties?
- (3) Whether the Court has got pecuniary jurisdiction to try the suit?

11. On behalf of the plaintiffs, PWs.1 to 3 were examined and Exs.A-1 to A-32 were marked. On behalf of defendants 4 and 5, DWs.1 to 3 were examined and Exs.B-1 to B-6 were marked. The Trial Court decreed the suit and the lower appellate Court affirmed the same.

12. While the plaintiffs pleaded that themselves and defendants 1 to 3 continued to be the owners and possessors of the suit schedule property, defendants 4 and 5 pleaded it was purchased by them, under Ex.B-1 dated 25-3-1965, for a consideration of Rs. 6,500/-. The entries in the revenue records for the years 1980-81 onwards, are said to be on the basis of Ex.B-1. The ownership of the land by the family of Sivaiah, before execution of Ex.B-1, is admitted. Therefore, much would depend upon the genuineness or otherwise of Ex.B-1. The other questions, such as, the capacity of Sivaiah to sell the property etc., would depend on the answers to this question, since it is not in dispute that the property was held by late Sivaiah, as kartha of the joint family, and the relationship of plaintiffs and defendants 1 to 3 with him, is not disputed. The onus was upon defendants 4 and 5 to prove Ex.B-1.

13. Defendant No. 4 deposed as D.W.1. He stated that his father, defendant No. 5, purchased the suit schedule property under Ex.B-1, about 30 years ago, under Ex.B-1, an unregistered sale deed. The entire consideration is said to have been paid, on the date of execution itself. The scribe of Ex.B-1 is said to have passed away about ten years prior to the date of deposition. According to DW-1, Sivaiah was illiterate. He stated that his father, defendant No. 5, was suffering from asthma, and he is not in a position to give evidence. He admitted that the entries in the revenue records were made on the basis of Ex.B-1. He has spoken to about certain improvements said to have been made by him for suit schedule property.

14. In the cross-examination, with witness stated that he was 14 years old at the time of purchase, and that he paid consideration of Rs. 6,500/- to Sivaiah. He denied the suggestion that Sivaiah was not a thumb impressionist and he was able to put his signature in writing. He admitted that there is nothing on record to show that he produced Ex.B-1 before the revenue authorities, in support of his claim. It was elicited through him that his name was entered into revenue records, even while his father, defendant No. 5, was alive. According to him, his father filed an application for mutation of his name in the revenue records. A suggestion was put to him to the effect that possession of the suit schedule property is with the sons of Sivaiah and that Ex.B-1 was prepared by himself and his father, after the suit was filed.

15. DW.2 is said to be an attesting witness to Ex.B-1. According to him, Sivaiah sold the land in favour of defendant No. 5, for a consideration of Rs. 6,500/-, and delivered possession on the same day. This witness said that the consideration of Rs. 6,500/- was paid in his presence by defendant No. 5 to late Sivaiah. It was suggested to him that defendant No. 5 was not financially sound. He admitted that he is an illiterate. It was suggested to him that late Sivaiah was an educated person, even while he was in the village Adlur and before he shifted to Hyderabad. DW-3 is a resident of Adlur Village. According to him, late Sivaiah sold his entire suit schedule property to defendant No. 5 about 30 years ago. He admitted that he was not a witness to the sale transaction. In the cross-examination, he stated that the consideration for the suit land was Rs. 65,000/-. The figure was written in words also, as Sixty five thousand. He stated that defendant No. 5 possessed landed property, even before the sale of the suit schedule land.

16. In support of their plea that late Sivaiah was not a thumb impressionist and was putting his signature in writing, the plaintiffs adduced oral and documentary evidence. PW.1, the Plaintiff No. 3, stated that his father Sivaiah did not sell the suit schedule property and that defendants 1 to 3, his brothers, are cultivating the land. He stated that his father admitted him in Government High School at Lalapet in the year 1967, and on the application for admission dated 20-6-1967, marked as Ex.A-26, his father had put his signature as parent. He got summoned the Attendance Register of the High School to prove that he studied in that school during the year 1968. He got summoned the records from the Mandal Revenue Office, Kamareddy, and stated that in Ex.A-28, it was recorded as though his father Sivaiah died on 5-4-1978, whereas, he died only in the year 1983. By referring to Ex.A-28/A, he stated that DW-1 was described as a successor of late Sivaiah. PW-1 further alleged that 6th defendant, the village patwari, was the root cause for all the entries in the revenue records.

17. In the cross-examination on behalf of defendants 4 and 5, it was suggested to this witness that his father knows writing his name to the extent of signature. This amounts to admission on the part of DW-1 that late Sivaiah was not thumb impressionist. A further suggestion was to the effect that DW-1 and his father were cultivating the land since last several years, and that they started making a claim, because the value of the land has gone up.

18. PW-2 is the Mandal Revenue Officer, who was working at the relevant point of time. He deposed that he was summoned by the Court to speak in relation to Exs.A-28, A-29 and A-30. In the chief-examination, it is stated that the name of DW-1 was entered in the revenue records, describing him as brother's son of Sivaiah. He has also stated that the mutation in favour of DW-1 was effected "as per succession". He admitted that any length of possession by a person over a land, does not entitle him to get the patta transferred. Defendant No. 6 was summoned through Court and he was examined as PW.3. He stated that he is not aware as to how the entries were made in the revenue records, in the name of

DW-1. He admitted that he did not issue any notice to any one, before making entries in Ex.A-28. According to him, the name of DW-1 was recorded in the revenue records by the patel of the village, by name Kistaiah.

19. The above summary of evidence of the witnesses, adduced on behalf of both the parties, discloses that the plaintiffs have established that late Sivaiah used to put his signature in writing, and that he died in the year 1983. Through the witnesses got summoned by them, the plaintiffs established that the name of defendant No. 4 was entered in the revenue records, as though he got the suit schedule property by succession, and was described as brother's son of late Sivaiah. There is nothing on record to show that DW-1 placed Ex.B-1, before the revenue authorities, while seeking mutation in his favour.

20. By the time the evidence of the defendants commenced, the 5th defendant was very much alive. He was not examined on the ground that he was not hale and healthy by that time. He figured as a purchaser under Ex.B-1. If there was any difficulty in bringing him to the Court, his evidence could have been recorded through commission. No steps were taken in this regard. An adverse inference needs to be drawn u/s 114(g) of Evidence Act to the effect, that if examined as a witness, defendant No. 5 could not have proved or sustained Ex.B-1. DW-1 who was said to be of 14 years age, as on the date of execution of Ex.B-1, claimed that he paid the consideration. This was contradicted by DW.2, who stated that the consideration was paid by defendant No. 5. As regards the quantum, a totally different picture was presented by DW.3. He stated that the property was purchased for Rs. 6,500/-, and this figure was recorded by the Trial Court in words also. Therefore, it is not an accidental omission, or a typographical mistake. The suggestion made on behalf of the defendants 4 and 5 to PW.1, that his father Sivaiah was literate only to the extent of putting his signature, is rather fatal to their case. The net result of the evidence is that Ex.B-1 was held not proved.

21. There are several suspicious circumstances that surrounded Ex.B-1. It was said to have been executed in the year 1965. It did not see the light of the day, till it was filed into Court. Entries in the revenue records were made only from the year 1980-81 onwards. Admittedly, these entries were not on the basis of Ex.B-1. As observed earlier, they were said to be on the basis of succession. PW.2, the Mandal Revenue Officer, categorically stated that it is not permissible to record the name of a person as a pattadar, only on the basis of possession, irrespective of its length. The record discloses that the name of DW-1 was entered as a pattadar, without verifying as to whether there existed any sale deed in his favour. To bring about the theory of succession, it was represented by defendants 4 and 5 to the revenue authorities as though Sivaiah died in 1973 and that defendant No. 4 is his sole surviving successor. There cannot be greater distortion of truth, than this. PW3, the Village Officer, gave evasive reply stating that he is not responsible for the entries and that they were made by a patel of the village. The cumulative effect of this evidence is that the entries were made,

without there being any valid basis and foundation.

22. It is true that the Act provides for a mechanism to get the entries in revenue records corrected. The bar contained in that Act, against civil suits, for the relief that can be claimed under that Act, operates only when the suit is filed exclusively for that purpose. Sub-section (2) of Section 8 of the Act makes it clear that where a suit for declaration is filed and a competent civil Court declares the rights of the respective parties, the entries are required to be corrected, to be in conformity with the decree. Therefore, the plea raised by the defendants 4 and 5, as to the maintainability of the suit, cannot be sustained.

23. The learned Counsel for the appellants had relied upon several judgments, in support of his contentions, mostly on legal aspects. In *Devineni Subbarao Vs. Devineni Pattabhiramayya and Others*, which was followed by this Court in *Jandhyala Sreerama Sarma and Ors. v. Nimmagadda Krishnavenamma and Ors.* AIR 1957 AP 434, it was held that if the elder member of the Joint Hindu Family failed to file a suit within three years from the date of his attaining majority, the suit filed by his younger brother stands barred by limitation. That, however, was a case relating to recovery of amount. As is well known, a suit for recovery stands barred within three years from the date of cause of action, and the debt to a Joint Hindu Family cannot be said to be in favour of each and every individual member. If the family reeled under any legal impediment, the earliest opportunity is to be availed to enforce the right. It is in that context that the principle was laid down. It does not apply to the facts of the present case.

24. Judgments were cited on the plea relating to fraud. The emphasis is that unless the facts are pleaded with sufficient clarity in relation to fraud, the Court cannot adjudicate upon the same. Attention of this Court is drawn to provisions of Rule 4 of Order 6 C.P.C. Reliance is placed upon the judgments of the Supreme Court in *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, and *Varanasaya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another*, . There is hardly any quarrel with this principle. It was laid mostly in relation to contracts. The allegation of the plaintiffs, against the revenue officials, was more of collusion, than of fraud, that too, as regards entries in the revenue records. The basis for challenge of the entries is, as to their correctness, and their not being in conformity with the procedure prescribed under the law.

25. The learned Counsel for the appellants relied upon certain judgments to convince this Court that it is permissible in a second appeal for a High Court, to correct certain clear errors, though they are of questions of fact. Learned Counsel for the respondents, on the other hand, cited a series of judgments to contend that it is impermissible for the High Court in a second appeal, to interfere with the finding of fact, recorded by the Courts below. The necessity to refer to the judgments, is obviated because of the reason that the second appeal is not being rejected, on the ground that the contentions referred to are pure questions of fact. Without standing on technicalities, the submissions were addressed to and views are expressed thereon.

26. For the foregoing reasons, the second appeal is dismissed. There shall be no order as to costs.