

(1967) 11 AP CK 0004
In the Andhra Pradesh High Court
Case No : Second Appeal No. 804 of 1964

Vaddaboyina Sesha Reddi

APPELLANT

Vs

Vaddaboying Tulasamma and Others

RESPONDENT

Date of Decision : 22-11-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
Evidence Act, 1872 — Section 5
Hindu Succession Act, 1956 — Section 14(1), 14(2)

Citation : AIR 1969 AP 300

Hon'ble Judges : Satyanarayan Rao, J

Bench : Single Bench

Judgement

Satyanarayan Rao, J. 1. Plaintiff is the appellant in this second appeal. He instituted the suit for a declaration that he is entitled to the plaintiff scheduled properties after the life-time of the 1st defendant and that the alienations made by the 1st defendant are not binding on him after the life-time of the 1st defendant. The 1st defendant made several alienations and the defendants who are interested in those alienations are impleaded as parties to the suit. The 1st defendant is related to the plaintiff as the widow of his deceased brother, one Venkata Subbareddi. Both of them constituted a joint Hindu family and after the death of the other brother, the properties survived to the plaintiff. The 1st defendant instituted the suit O. S. 421 of 1945 claiming maintenance and a charge for the amount on the properties of the joint family.

She claimed also a larger relief for partition. But that was denied. The suit was decreed ex parte on 29-6-1946. The ex parte decree was later set aside and a decree on contest was passed. After that decree, the plaintiff and the 1st defendant entered into a compromise and they filed a compromise petition E. A. 428 of 1969 into Court under O. XXI, R.2, Civil P. C. to enter full satisfaction of the decree on the ground that the matter was compromised between them. Under the compromise the 1st defendant, it is alleged, is given possession of some properties with a right of reverter to the plaintiff. Under the compromise

the 1st defendant got half share in the family properties to enjoyed by her for her life and then to revert back to the plaintiff. As the 1st defendant made several alienations, the plaintiff filed the suit for the reliefs stated supra.

2. There was first a compromise deed along with a petition to enter full satisfaction. The compromise was filed in Court. In this suit the question is whether the estate given to the 1st defendant under the compromise has become enlarged into an absolute estate u/s 14(1) of the Hindu Succession Act 1956. It was contended on behalf of the plaintiff that what she got under the compromise was only a limited estate which falls within Section 14(2) of the aforesaid Act. Unfortunately it was discovered that the parties have no copies of any of the proceedings which led to the final entering up of full satisfaction of the decree. Oral evidence was, therefore, allowed by the trial Court and that order was upheld by the appellate Court. A certified extract of the execution register is filed as Ex. A-9. It was ascertained that these records were not available in the Court. Both sides let in evidence firstly regarding the terms of the compromise and secondly regarding the proceedings which led up to entering up of full satisfaction.

There was difference of opinion between the parties, however, regarding the nature and extent of the estate that was the conferred upon the 1st defendant under the terms of the compromise. While the plaintiff's case is that she was given only a limited estate with power of reverter to the plaintiff, the defendants pleaded that it is absolute title that was conferred upon the 1st defendant. As between both these versions the trial Court accepted the contention of the plaintiff that the 1st defendant acquired only a life estate under the compromise with a reverter back. That the compromise was filed in Court along with a petition to enter up full satisfaction is apparent from Ex. A-9 and it also shows that the Court ordered full satisfaction. In the light of these facts we may now consider whether the case falls u/s 14(1) read with the explanation of the Hindu Succession Act 1956 or under sub-section (2) of Section 14 of the same Act. If the case does not fall u/s 14(2), the 1st defendant will be entitled to absolute estate under sub-section (1) of Section 14. The trial Court accepted the contention of the plaintiff that the case falls u/s 14(2) of the Hindu Succession Act, The appellate Judge, however, disagreed and he was of the opinion that the case falls u/s 14(1) and not u/s 14(2) of the Act. Which is the correct interpretation of the section of the aforesaid Act is the question in his second appeal.

3 The case to fall u/s 14 sub-section (2) the person must have acquired the property by way of gift or under will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or award has restricted the estate in the property. So this sub-section applies only to the property acquired by a person in the manner provided in that sub-section. In other cases Section 14(1) with the explanation applies.

4. Explanation to S. 14(1), it may be noted, gives an inclusive definition of "property" referred to in sub-section (1) which provides for cases where a female Hindu has inherited it, or acquired it by devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person whether a relative or not, before, at or after her marriage, or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of the Act.

5. Therefore, the modes of acquisition laid down in the explanation to sub-section (1) gives the categories of all cases in which the property might have been acquired. But the right under the provision in sub-section (1) to Section 14 is restricted by sub-section (2) which cuts down the modes of acquisition specified in that sub-section. The question therefore, is whether the contention of the appellant that the case falls under sub-section (2) of Section 14 is correct. No doubt the mode of acquisition in the present case, it is contended, is by or under order of Civil Court and therefore, sub-section (2) applies. The 1st defendant, it may be remembered, obtained a decree for maintenance with a charge on property. She was putting the decree in execution and at that stage the compromise was effected. The original decree was only a money decree with a charge which does not concern at all with the property here. Under the terms of the compromise deed which has been proved by a respectable person P. W. 1 an advocate of 40 years standing, the 1st defendant was given life estate in immovable property in lieu of maintenance which she obtained under the decree. The question is whether it could be said, on the facts is whether it could be said, on the facts set out above, that the 1st defendant held title to the property under order of Court which recorded the compromise. She had no title, as I said before, in any immovable property under the decree.

She now gives a substituted right the immovable properties in lieu of money allowance granted to her. The title, undoubtedly, therefore, is referable to the compromise which was not outside the Court. It was filed in Court with a prayer that it should be recorded. On the basis of the compromise filed, full satisfaction of the compromise filed, full satisfaction was entered into. Satisfaction here of the decree consists of the allotment of immovable property in discharge of the obligation created by the decree. There compromise which was recorded and full satisfaction of the decree recorded by the Court. The full satisfaction stage will be reached only when title to property under the compromise vested in the 1st defendant. Therefore, it is not true to say that she gets title otherwise than under order of Court. It may be possible to contend that she got title to the property under an instrument. Compromise certainly is an instrument and it is possible to contend that she acquired title also under it. It is unnecessary to pursue the matter as it is clear that the 1st defendant held title to the property under the order of Court which culminated in entering up of full satisfaction of the decree.

6. Same point was raised in the course of argument that the oral evidence should not have been admitted to prove the proceedings in Court. But that order was made by the trial Court and no exception was taken at the time and both parties adduced evidence recognising the necessity for oral evidence to prove the proceedings before Court. That objection, therefore, cannot stand nor is the objection that she acquired title de hors the order. In these circumstances, differing from the lower appellate Court and agreeing with the trial Court, I hold that the case is governed by Section 14(2) of the Hindu Succession Act, 1956.

7. The appeal, therefore is allowed, the judgment and decree of the lower appellate Court are set aside and those of the trial Court restored with costs. No leave.

8. Appeal allowed.