

(1953) 08 AP CK 0012

In the Andhra Pradesh High Court

Case No : Civil Appeals No's. 1021 and 1022 of 1356

Vaijnath and Another

APPELLANT

Vs

Dagdudas and Others

RESPONDENT

Date of Decision : 07-08-1953

Acts Referred:

Citation : (1953) 08 AP CK 0012

Hon'ble Judges : Palnitkar, J;Deshpande, J

Bench : Division Bench

Advocate : Govind Rao Ardhapurkar, for the Appellant; Anisuddin Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

1. This is Plaintiffs' appeal. The Plaintiffs' suit was for declaration of title and possession of the house in dispute and for the delivery of movable property consisting of some timber and corrugated iron-sheets relating to the house in question. The Plaintiffs stated in their plaint that the house in dispute belonged to one Nagoba Pandharpate, after whose death his two widows, Bhagobai and Rangubai, got into possession of the house. There was a dispute between the two widows and the Revenue Authorities decided that both the widows were entitled to the house.

After sometime Bhagobai died and Rangubai, the other widow, became the sole owner of the house; Rangubai took in adoption one Narhari s/o Rajaram and also executed a deed of adoption and from that date the adopted son was in possession of the house; that the said son through his guardian sold the house to the father of the Plaintiffs, Shanker Rao, for a sum of Rs. 500/-. The Plaintiffs state that the said Shanker Rao has become a "sanyasi" and left the world so far as the temporal property was concerned and they have now become entitled as his sons to the property in dispute. It was further stated that Shanker Rao had filed a suit for possession on the basis of a sale-deed, which was decreed on 19th Ardibehist 1352 P.; in execution proceedings the Defendants intervened and

resisted the execution of the decree. The Court allowed the intervener petition; therefore, the Plaintiffs have now filed this regular suit.

2. In their written statement the Defendants contended that the adoption did not take place. They admitted the fact that the house belonged to Nagoba Pandharpate, who was the grand-father of Defendants Nos. 1 to 4 and the father-in-law of Defendant No. 5. It was contended that the house came into the sole possession of Bhagobai, the other widow, as there was a partition between Rangubai & Bhagobai under which Bhagobai got the house in question; that Bhagobai had made a gift of the house in question in favour of the Defendants & executed a registered gift-deed dated 28th Mehir 1350 F.

The trial Court framed nine issues: Issue No. 1 relates to the adoption of the Plaintiff.

Issue No. 2 relates to the factum of the sale-deed in favour of the Plaintiffs" father and its validity.

Issue No. 3 is with respect to the movable property, mentioned by the Plaintiff.

Issue No. 6 concerns the allegation of the Defendants with respect to the partition of the property between the two widows and whether the house in dispute was allotted to the share of Bhagobai under the partition.

Issue No. 7 relates to the gift in question and its validity.

3. The trial Court after recording the evidence of the parties came to the conclusion that the adoption of Narhari was proved by evidence; that the allegation of the Defendants with respect to the partition between the widows and the gift by Bhagobai in favour of the Defendants was also proved; that the gift was not valid after the death of Bhagobat, the donor; and that, therefore, the Plaintiffs were entitled to possession. With respect to the movable property the lower Court came to the conclusion that it was not proved by evidence and therefore passed a decree in favour of the Plaintiffs with respect to their declaration of right to the house in dispute and also gave a decree for possession, while dismissing the suit for movable property.

4. On appeal the learned Judge of the lower Appellate Court dismissed the suit on the sole ground that in his opinion the factum of adoption was not proved.

The Plaintiffs had also filed an appeal in the lower Court with respect to their claim of movable property dismissed by the trial Court. The learned Judge of the lower Appellate Court dismissed that appeal.

5-7. Two appeals have, therefore, been field before us by the Plaintiffs, one against the dismissal of the suit with respect to the house in question and another with respect to the movable property. The learned Advocate for the Appellants contended before us that the lower Appellate Court had taken a wrong view of the evidence and that its finding with respect to the adoption of the Plaintiff was perverse. In view of the said argument we examined the evidence in

the case. (His Lordship said after examining the evidence that the adoption was proved and that the trial Court was right in its view on that question and that the lower appellate Court's view could not be upheld and then proceeded).

8. The claim of the Defendants on the basis of the partition between the two widows cannot be upheld. The deed of partition alleged by the Defendants is in the first instance being unregistered not admissible so as to affect the immovable property mentioned therein. Secondly, we do not find from the perusal of the deed that Rangubai had relinquished her right of survivorship but it was simply an arrangement by which Bhagubai alone was to enjoy the whole property of the husband till her death. Therefore, after her death naturally the property came to Rangu Bai by survivorship and she became the sole owner. There is nothing in the partition deed to prohibit her from adopting a boy.

It is a clear proposition of Hindu Law, that co-widows taking as joint tenants have no right to enforce an absolute partition of an estate against the others so as to destroy their right of survivorship, though they can have a partition and separate partition of property was that each may enjoy an equal share of her income during her life, taut such a co-widow cannot alienate any part of the corpus of the estate by gift or will so as to prejudice the rights of the survivors or future reversioners. See Bhugwandeem Doobey v. Myna Baee 11 Moo Ind App 487 (A)--Sri Gajapathi Nilamani Patta Maha Devi Garu v. Shri Gajapathi Radlnunani Patta Maha Devi Garu 4 Ind App 212 (PC) (B)--Sivanancha Perianal Filial v. Pandaram AIR 1951 Trav Co. 26 (C). Thus the partition and allotment of the house in favour of Bhagobai cannot defeat the right of Rangu Bai, the survivor. Moreover, the claim of the Defendants in the gift-deed of Bhagobai cannot be of any avail and cannot be held valid after the death of the donor. Thus, there is no force in the contentions of the Defendants.

9. With regard to the claim of the Plaintiff respecting the movable property, we agree with the finding of the First Court that the Plaintiff has not been successful in proving the same. The Plaintiff's suit to that extent must stand dismissed. In conclusion, we decree the Plaintiff's suit for possession and declaration of ownership with respect to the house in dispute and dismiss his claim with respect to the movable property. In the result appeal No. 1022 of 1356 P., Register No. 4, is allowed with costs throughout and the appeal No. 1021 of 1356 P., Register No. 4, is dismissed with costs throughout.