
(2005) 08 AP CK 0092
In the Andhra Pradesh High Court
Case No : AS No. 308 of 2001

Vemuganti Venkata Kalyani	Vs	APPELLANT
Nyayapathi Padmavathamma and Others		RESPONDENT

Date of Decision : 20-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Evidence Act, 1872 — Section 115
Hindu Succession Act, 1956 — Section 14, 14(1), 3, 3(1), 3(3)

Citation : (2005) 6 ALD 204

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Vijayasen Reddy, for the Appellant; V.L.N.G.K. Murthy, for Respondent Nos. 1 and 3 and S. Niranjana Reddy, for Respondent Nos. 2 and 4 to 6, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The plaintiff in O.S. No. 348 of 1998, on the file of the learned Additional Senior Civil Judge, Guntur, is the appellant. For the sake of convenience, the parties are referred to, as arrayed in the suit.

2. Plaintiff, defendant No. 2 (since dead, represented by her legal representatives) and defendant No. 3 are the daughters of the first defendant. Their father, Nyapathi Srinivasa Rao, died in 1949, leaving behind him, his wife and daughters. He did not have any male issues. The plaintiff filed the suit, for partition and separate possession of the suit schedule house. She pleaded that her father left certain items of immovable property, and the first defendant constructed a house in a plot of land at Guntur, by using the sale proceeds or income from the other properties. It was her case that the first defendant promised that she would divide the suit schedule property, into four equal parts and give one share each to herself and her two sisters, but refused to act upon such promise.

3. Defendant No. 2 supported the case of the plaintiff. The first defendant filed written statement, pleading that she succeeded to the land, on which the suit schedule house was constructed, on the death of her husband, and the limited estate, which accrued to her, under the prevalent law, had enlarged into an absolute one, u/s 14 of the Hindu Succession Act, 1956 (for short "1956 Act"). She pleaded that she constructed the house, by utilizing her stridhana property, and that neither the plaintiff nor the defendants 2 and 3 have any right over it. She made a reference to O.S. No. 79 of 1977, on the file of the Subordinate Judge, Guntur, filed by the plaintiff herein, for specific performance, against her, and urged that the plaintiff herself recognized her (1st defendant's) absolute rights over the suit schedule property, and thereby, she is estopped from filing the present suit.

4. She further pleaded that she took the son of the third defendant, in adoption. Half of the suit schedule property is said to have been sold to the husband of the third defendant, and as regards the rest, a deed of settlement is said to have been executed, retaining the life interest for her and creating vested remainder in favour of the adopted son. She had also pleaded that the second defendant filed O.S. No. 515 of 1990, on the file of the Court of Principal Subordinate Judge, Guntur, for the relief of partition of the suit schedule property, in which all the parties herein were impleaded, and that the same ended in dismissal, and urged that the judgment in that suit operates as res judicata.

5. The third defendant adopted the written statement filed by her mother, first defendant. On the basis of the pleadings before it, the trial Court framed the following issues :

- (1) Whether the plaintiff is entitled for 1/4th share of the suit schedule property?
- (2) Whether the suit is barred by res judicata ?
- (3) To what relief ?

6. The plaintiff deposed as PW. 1, and the second defendant as PW-3. PW-2 is the husband of the second defendant. No documents were filed on behalf of the plaintiff. Third defendant deposed as DW-1 and Exs.B-1 to B-14 were marked. Through its judgment, dated 11-10-2000, the trial Court held that the suit schedule house is the absolute, and exclusive property of the first defendant, and as such, it was not available for partition. It rejected the contention that the judgment in O.S. No. 52 of 1990, operated as res judicata. The suit was ultimately dismissed. Hence, this appeal.

7. Sri B. Vijaysen Reddy, learned Counsel for the plaintiff, submits that the property accrued to the estate of the deceased Srinivasa Rao, only in the year 1958, as a result of partition, among the co-sharers, and the plaintiff and defendants succeeded to the same, according to the provisions of 1956 Act. He contends that even according to the first defendant, she got possession of the land in the year 1958, and in that view of the matter, Section 14(1) of 1956 Act,

does not apply to her. He further contends that being a daughter and class-I heir of the deceased, Srinivasa Rao, the plaintiff cannot be denied her share, in the suit schedule property, learned Counsel points out that O.S. No. 79 of 1977, filed by the plaintiff, was in a different context, and the same does not amount to acquiescence on her part, of the exclusive right of the first defendant over the suit property.

8. Sri V.L.N.G.K. Murthy, learned Counsel for the defendants 1 and 2, on the other hand, submits that the succession to the estate of late Srinivasa Rao opens on the date of his death, and thereby the suit schedule property, in the form of an undivided share, devolved upon the first defendant as a limited estate, by operation of the Hindu Women's Rights to Property Act, 1937 (for short "1937 Act"). He submits that the subsequent partition, among the co-sharers of late Srinivasa Rao, has no relevance, in the context of succession, and that the limited estate that was vested in the defendants, became enlarged, in view of Section 14(1) of 1956 Act. He further submits that the fact that plaintiff entered into an agreement, to purchase an item of the property, succeeded to by her mother, and filed a suit for specific performance of the agreement, is sufficient to non-suit her. Learned Counsel points that O.S. No. 515 of 1990 was filed, for the relief of partition, and all the parties herein, were parties thereto, and thereby the judgment therein, operates as *res judicata*. He further contends that the suit was defective on account of non-joinder of necessary parties.

9. The suit was filed for partition of an item of property, left by late Srinivasa Rao. By the time he died in the year 1949, he held certain items of immovable property. He left behind him, his wife, first defendant, and three daughters, the plaintiff and defendants 2 and 3. While the eldest and youngest daughters, the plaintiff and defendant No. 2, respectively, pressed for partition of the left over properties, his wife and his second daughter resisted the claim. His death occurred at a time, when 1937 Act was in force, but before the 1956 Act was enacted. There were no male issues to him and the first defendant. Therefore, the whole controversy turns around the nature of succession, that took place, on the death of Srinivasa Rao, and the effect of the subsequent legislations.

10. Before framing the points for consideration and proceeding further, one aspect needs to be dealt with at the threshold. O.S. No. 515 of 1990 was filed by the second defendant, for partition of the suit schedule property. The plaintiff and defendants 2 and 3 herein were impleaded, as defendants, in that suit. Though the evidence was recorded and various steps were taken therein, the suit was dismissed for default, on 2-7-1997. The defendants 1 and 3 pleaded that the judgment in that suit, operates as *resjudicata*. In fact, an issue was framed by the trial Court, on that aspect. It answered the issue in the negative, by taking the view that it is only a judgment on merits, that would operate as *res judicata*, and not the one which entails dismissal for default. A simple reading of Section 11 C.P.C. supports that view, and this Court does not find any necessity, to undertake any further discussion on that.

11. In view of the submissions of the learned Counsel for the parties, the following points arise for consideration :

- (1) Whether the estate of late Srinivasa Rao devolved upon the first defendant alone, or on plaintiff and defendants 2 and 3 as well, on his death?
- (2) Whether the plaintiff and defendants 2 and 3 get any share in the suit schedule property, u/s 8 of 1956 Act?
- (3) Whether the plaintiff is estopped from filing the present suit?
- (4) Whether the suit is defective for nonjoinder of necessary parties?

Points 1 and 2 :

12. It has come in the evidence that by the time late Srinivasa Rao died in 1949, he was possessed of about Ac. 12-00 of land and an undivided 1/3rd share, in an item of urban property at Guntur. While the marriage of his eldest daughter, defendant No. 2, was performed during his life time, the marriage of other two daughters were performed thereafter. The record discloses that portion of the agricultural lands were gifted to defendants 2 and 3, and remaining was sold by the first defendant. She pleaded that the sale proceeds were utilized for maintaining the family, performing the marriages of plaintiff and defendant No. 3, etc. The agricultural lands are not the subject-matter of the suit.

13. Late Srinivasa Rao had 1/3rd share in the land in T.S. No. 511 of Ward-1, Block-8, Guntur Town. After his death, the first defendant took part in partition of the said property, on 4-8-1958, through a deed of partition, marked as Ex.B-4. Certain legislative changes took place, between the date of death of Srinivasa Rao, and partition referred to above. Act 1956 came into force, with effect from 17-6-1956. Before 1937, succession was mostly governed by uncodified Shasthraic Law, in which women did not figure as class-I heirs. The status of a widow, under Hindu Law, in the matter of succession, had undergone changes under the 1937 Act. A widow was made entitled to succeed to the property of a deceased male, on par with their son. However, sub-section (3) of Section 3, restricted the scope of the right to a life estate, known as the Hindu Women's estate. It is beneficial to extract Sub-section (1) and (3) of Section 3 of 1956 Act.

"Section 3 : (1) When a Hindu governed by the Dayabhaga School of Hindu Law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow, all his widows together, shall, subject to the provisions Sub-section (3), be entitled in respect of property in respect of which he dies intestate to the same share as a son :

Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is surviving a son or son's son of such predeceased son;

Provided further that the same provisions shall apply mutatis mutandis to the widow of a predeceased son of a predeceased son.

(2) ...

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner."

An important aspect to be noticed here is that the daughter of a Hindu was not recognized, as a legal heir to the estate of her father. Subsequently, through the 1956 Act, two substantial changes were brought about, in the context of succession to properties, by Hindu women. The first is that Section 8, read with the schedule of that Act, conferred the status of class-I heir, on the daughter of a Hindu. Secondly, the limited estate and right of a widow, was enlarged into an absolute one, u/s 14 of that Act. It reads as under :

"14. Property of a female Hindu to be her absolute property :-(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation :-In this sub-section, "Property" includes both movable and immovable property acquired by a female Hindu by inheritance or 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 this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a 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 prescribe a restricted estate in such property."

In the instant case, by the time Srinivasa Rao died in 1949, the first defendant alone was his legal heir, may be, for a limited estate. The plaintiff and defendants 2 and 3 were not conferred with the status of class-I heirs. The limited estate that devolved upon the first defendant, had enlarged into an absolute estate, by operation of Section 14 of 1956 Act. Thereby, she became absolute owner.

14. It has been vehemently contended that the partition, among the co-sharers of Srinivasa Rao, took place in the year 1958, and that the first defendant was not possessed of, any property, left by Srinivasa Rao by the time the 1956 Act came into force. On this premise, it was argued that Section 14(1) of 1956 Act does not apply to this case.

15. It is true that the partition took place through Ex.B-6, in the year 1958. However, it cannot be said that first defendant did not possess any right, vis-a-vis the property, till such a partition took place. The expression "any property possessed by a female Hindu", occurring in Section 14(1) of 1956 Act, was interpreted by the Supreme Court in Mangal Singh and Others Vs. Shrimati Rattno and Another, It was held that the expression "possessed by" has to be understood in contrast, with the expression "in possession of. It was observed that the physical possession of an item of property, is not a condition precedent, for operation of Section 14(1), vis-a-vis a Hindu widow, and that it would be sufficient, if there existed a legal entitlement for possession. It is not necessary to refer to the other judgment on this aspect.

16. In a joint property, each sharer is presumed to be in possession of the property, and any one of them in actual physical possession, shall be holding it, for and on behalf of all other sharers. Partition would only bring about a physical division, on the basis of the existing entitlement. Therefore, the entitlement of the first defendant, to an extent of 1/3rd share, vis-a-vis that property, attracted the provisions of Section 14(1). Further, the succession to a Hindu male opens on the date of death. Even where his interest over any property was, in the nature of undivided share, the succession does not cease to operate, till the partition takes place. While succession is brought about and comes into existence, by operation of law, partition takes place with the violation and acts of parties. A combined operation of the provisions of Acts 1937 and 1956, vis-a-vis the subject-matter of this appeal, it that:

(a) the estate, including the undivided share in an item of property, devolved upon the first defendant, as the sole surviving legal heir, with the death of Srinivasa Rao in 1949,

(b) the daughters of Srinivasa Rao did not succeed to it, because they were not recognized as legal heirs, by that time,

(c) the partition of the property in the year 1958, does not have any impact on the operation or both the enactments, referred to above, and

(d) the limited estate that devolved upon the first defendant, enlarged into an absolute estate, by operation of Section 14(1) of 1956 Act.

The property was not available to be shared, in accordance with Section 8 of 1956 Act, by the time that Act came into force. Therefore, points 1 and 2 are answered against the appellant.

Point No. 3 :

17. The plaintiff filed O.S. No. 79 of 1977, in the Subordinate Court, Guntur, against the first defendant, for the relief of specific performance of agreement of sale. She pleaded that 137 sq.yards of the present suit schedule, was agreed to be sold to her by her mother, through an agreement of sale dated 5-10-1973, for a consideration of Rs. 12,330/-. It was pleaded that a sum of Rs. 8,980/-,

belonging to the plaintiff herein, in the hands of the first defendant, was treated as advance, and that possession of the property was delivered. The first defendant denied the execution of the sale deed. As the trial of the suit progressed, the plaintiff agreed not to press for a decree, in case, an amount of Rs. 19,000/- is paid to her, on or before 6-12-1979. The first defendant agreed for that course of action, and a judgment in terms thereof, was rendered on 11-9-1979. The said judgment is marked in this suit, as Ex.B-7, and the decree as Ex.B-8. Through a challan, dated 28-11-1979, marked as Ex.B-9, the first defendant deposited a sum of Rs. 19,000/-, and the same was withdrawn by the plaintiff. The record discloses that after withdrawing the said amount, the plaintiff had removed a structure said to have been raised by her, over the property.

18. These facts disclose that the plaintiff recognized the first defendant to be the absolute owner of the suit schedule property. Through the series of representations made in that regard, she made the first defendant to believe that she is the absolute owner of the property, and had derived the benefit, in the form of a sum of Rs. 19,000/-. The first defendant has suffered a detriment, on the strength of the representation made by the plaintiff. That amount represented the cost of 137 sq.yards, which is more or less 1/4th of the suit schedule property, equivalent to the share claimed in the present suit. The first defendant has changed her possession, at a subsequent point of time, by selling half of the property, through a sale deed dated 16-12-1981, marked as Ex.B-11, and a deed of settlement dated 17-12-1981, marked as Ex.B-12. The provisions of Section 115 of the Evidence Act, get straight away attracted to the facts of the case. Therefore, the plaintiff is precluded from claiming that she had a share in the suit schedule property.

Point No. 4 :

19. Though no issue was framed by the trial Court, as to the non-joinder of necessary parties, it is, however, evident from the facts of the case that much before the suit came to be filed, half of the suit schedule property was sold, under Ex.B-11, and deed of settlement executed on the next day, through Ex.B-12. Substantial rights . had accrued to the parties to the said document. Whatever may have been the justification for the plaintiff, in not impleading the purchaser under Ex.B-11, and beneficiary under Ex.B-12, when she filed the suit, she ought to have taken necessary steps, at least, when she came to know about the same, through the written statement filed by the first defendant. Grant of any relief in favour of the plaintiff, would certainly have its impact on the said persons, and they are necessary parties to the suit. Therefore, the suit is defective, for nonjoinder of necessary parties also.

20. For the foregoing reasons, the appeal is dismissed. However, there shall be no order as to costs.