
(2006) 11 AP CK 0014

In the Andhra Pradesh High Court

Case No : Second Appeal No. 270 of 1996

Vurukutla Pamulu and Another

APPELLANT

Vs

Kuppa Bhanumathi and Others

RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1), 14(2), 19(1), 21, 22(2)

Citation : (2007) 3 ALD 236 : (2007) 3 ALT 589

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.S.R. Subrahmanyam, M. Bala Subrahmanyam and M. Ram Mohan, for the Appellant; Ramalingeswar Rao, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The only substantial question of law argued by both the learned Counsel on record is as hereunder:

Whether on facts and in the circumstances of the case the estate of the destitute widowed daughter on whom the suit property was settled by her father gets enlarged in her hands after the death of her father qua her brothers by virtue of Section 14(1) of Hindu Succession Act.

2. Sri M.Ram Mohan, learned Counsel representing the appellants-defendants 1 and 2 would submit that both the Courts had totally erred in appreciating the scope and ambit of Sections 14(1) and 14(2) of the Hindu Succession Act, hereinafter in short referred to as Act for the purpose of convenience. The learned Counsel would submit that the facts are not in controversy at all and the only question which may have to be decided is the applicability of Section 14(1) or Section 14(2) of the Act referred to supra. The counsel also had taken this Court through Section 14(1) of the Act and further placed strong reliance on the decision of the Apex Court in Balwant Kaur v. Chanan Singh AIR 2000 S.C. 1908 . The counsel also would submit that the view expressed in Chanan Singh

and Others Vs. Balwant Kaur and Others, in fact was reversed and hence in view of the decision of the Apex Court, the appellants are bound to succeed in this Second Appeal.

3. Per contra, Sri Ramalingeswar Rao, learned Counsel representing the respondents 2 to 6 would maintain that concurrent findings had been recorded by both the Courts below to the effect that the plaintiffs are entitled to a decree for declaration of their rights in the plaint schedule property. Learned Counsel in all fairness would submit that in view of the plaintiffs' contention that the 1st defendant is a tenant, the Courts below had negated the relief of possession and the same cannot be found fault with, but as far as the declaration of right is concerned, inasmuch as the Courts below recorded concurrent findings, the same may have to be confirmed. On the aspect of the applicability of Section 14(1) or Section 14(2) of the Act referred to supra the counsel made certain submissions on the aspect of the words or expression "property possessed by a female Hindu" and would contend that inasmuch as the deceased was not in possession of the property and had no pre-existing right for conferment of full ownership, the stand taken by the appellants-defendants 1 and 2 cannot be said to be a sustainable stand. The counsel placed strong reliance on the judgment reported in Ram Vishal (Dead) by Lrs. and Ors. v. Jagan Nath and Anr. : (2004)9SCC302 .

4. Heard the learned Counsel and perused the findings recorded by the Court of first instance and also the findings recorded by the appellate Court.

5. The parties hereinafter would be referred to as plaintiffs and defendants as arrayed in OS No. 104 of 1984 on the file of Principal District Munsif, Yellamanchili. It is needless to say that the appellants herein are defendants 1 and 2 in the said suit.

6. One Kuppa Brahmalingaswamy instituted a suit OS No. 104 of 1984 on the file of Principal District Munsif, Yellamanchili for declaration of his right in the plaint schedule properties and for recovery of possession after evicting the defendants and their men from the plaint schedule properties. During the pendency of the suit, the first plaintiff died and his legal representatives were brought on record as plaintiffs 2 to 6 by order in IA No. 772 of 1987 dated 20.7.1987. The 2nd defendant in fact was made as a party after the institution of the suit. The Court of first instance recorded the evidence of PWs.1 and 2, DWs.1 to 4, marked Exs.A1 and A2, Exs.B1 and B2 and on appreciation of evidence, came to the conclusion that in the light of the plea of tenancy, the civil Court has no jurisdiction to entertain the suit so far as it relates to the eviction of the 1st defendant is concerned, however, the learned Judge came to the conclusion that the plaintiffs are entitled to a decree for declaration of their right in the plaint schedule properties. Aggrieved by the same, the defendants 1 and 2 carried the matter by way of appeal AS No. 54 of 1988 on the file of Subordinate Judge, Anakapally and the legal representatives of the 1st plaintiff preferred cross-objections as against the adverse findings recorded by the Court of first instance and the appellate Court ultimately dismissed the appeal as well as the cross-

objections. The legal representatives of the 1st plaintiff as such had not preferred any Second Appeal, but aggrieved by the same defendants 1 and 2 have preferred the present Second Appeal.

7. It was pleaded in the plaint as hereunder:

The plaint schedule property belonged to late Dulipala Venkatarama Krishnamma. The plaint schedule property was given to the daughter of Venkata Rama Krishnamma i.e., Perumalla Kasamma, with a condition that the latter should enjoy the same with limited right and after her death, the plaint schedule land should revert back to Venkata Rama Krishnamma. While enjoying the property, Perumalla Kasamma died about four years back and the plaint schedule land was reverted back to Venkata Rama Krishnamma. During partition among the sons of Venkata Rama Krishnamma, the plaint schedule land fell to the share of Dulipala Sanyasi Rao. The said Sanyasi Rao sold the plaint schedule land to the 1st plaintiff under a registered sale deed dated 15.7.1968 and thus, the 1st plaintiff became the absolute owner of the plaint schedule property. While so, the 1st plaintiff gave the schedule land to the 1st defendant for cultivation on lease of Rs. 100/- per year, during the year Siddardha. Accordingly, the 1st defendant cultivated the schedule land and failed to pay the cist. So, the 1st plaintiff issued a lawyer's notice dt. 3.3.1980 demanding the 1st defendant to pay the cist amount and also to vacate the schedule land, for which the 1st defendant gave reply dt. 8.3.1980 stating that there is no landlord and tenant relationship between the 1st plaintiff and the 1st defendant and that therefore, he need not vacate the schedule land. As the 1st defendant denied the landlord and tenant relationship between himself and the 1st plaintiff, the oral lease is cancelled. The 1st defendant has no right in the plaint schedule land. Hence, this suit is filed for declaration of title of the plaintiff No. 1 in the schedule land and for consequential possession thereof.

8. The defendant No. 1 filed written statement pleading as hereunder:

This defendant never cultivated the schedule land as a tenant under the 1st plaintiff during 1979-80 on cist of Rs. 100/-. The 1st defendant was inducted as a tenant for the schedule land during the year 1978-79 by Perumalla Annapoornamma wife of Narayana, and daughter of Dulipala Ramakrishnayya, for cist of Rs. 70/-, and he was paying the cist to the said Annapoornamma. Annapoornamma died in 1980 intestate. According to the Will executed by late Annapoornamma dated 8.2.80, the plaint schedule property devolved on her niece Akella Veera Laxmikantham, w/o. Suryanarayana (D.2). After the death of Annapoornamma, D.1 is paying cist to Veera Laxmi Kanthamma (D.2) and cultivating the land as a tenant under her. Later, the 1st defendant gave Rs. 4,000/- off and on to the 2nd defendant and has been cultivating the schedule land in lieu of interest thereon. Name of daughter of Dulipala Ramakrishnayya is Perumalla Annapoornamma but not Kasamma. Thus, there is no landlord and tenant relationship between the 1st plaintiff and the 1st defendant. Hence, Akella Veera Laxmikanthamma is a necessary party to the suit and without her, the suit

is not maintainable. As there is no landlord and tenant relationship between D.1 and the 1st plaintiff, the suit for declaration is not maintainable. The 1st plaintiff should have filed an A.T.C. instead of this suit.

9. The 2nd defendant filed the written statement with the following averments:

This defendant has got right, title and possession over the schedule property by virtue of Will executed by Perumalla Annapoornamma on 8.2.1980 and she leased out the schedule land on cist of Rs. 70/- to the 1st defendant during 1978-79 and after the death of Annapoornamma, the 1st defendant is cultivating the schedule land as tenant under this defendant. Subsequently, this defendant borrowed Rs. 4,000/- from the 1st defendant and now, he is cultivating the schedule land in lieu of interest due on Rs. 4,000/-. The 1st plaintiff has no right, title or interest in the schedule property. There is no cause of action to the suit".

10. On the strength of the above pleadings, the trial Court settled the following issues and additional issues:

1. Whether the suit schedule property was given to Perumalla Kasamma for life enjoyment by D.Venkataramakrishna?

2. Whether, in the family partition between the sons of late Venkata Ramakrishna, the schedule property fell to the share of Dulipala Sanyasi Rao?

3. Whether the plaintiff is the purchaser of the said property from D.Sanyasi Rao on 15.7.84?

4. Whether the plaintiff (1st) has right and title in the suit schedule property?

5. Whether there is any landlord and tenant relationship between plaintiff (1st) and defendant (1st)?

6. Whether the (1st defendant) is trespasser with regard to the suit schedule property?

7. Whether one Akella Veera Lakshmi Kantham is a necessary party to the suit?

8. Whether the plaintiff is entitled for the relief of possession as prayed in the suit?

9. Whether the civil Court has jurisdiction to entertain the suit?

10. To what relief? Additional issues:

1. Whether the Will dated 8.2.1980 is true, valid and binding on the plaintiff?

2. Whether the 1st defendant is the tenant under the 2nd defendant for the suit land?

3. Whether the 2nd defendant is the absolute owner of the suit land by virtue of Will dated 8.2.1980?

11. The plaintiffs claimed title to the schedule property by virtue of a registered

sale deed dated 15.7.1968 executed by Dulipala Sanyasi Rao. It is their case that one Venkata Ramakrishna was the original owner of the property and the said Venkata Rama Krishna executed a gift deed in favour of his daughter Perumalla Kasamma for her life enjoyment and after her death, the property to revert back to Venkata Rama Krishna. After the death of Perumalla Kasamma, the property was partitioned and in the said partition the schedule property had fallen to the share of Sanyasi Rao, the vendor of the plaintiffs. Further specific stand was taken by the plaintiffs that the 1st plaintiff gave the plaint schedule property to the 1st defendant for cultivation on lease and the 1st defendant denied the title of the said plaintiff contending that one Perumalla Annapoornamma, wife of Narayana, inducted him as tenant, and further specific stand was taken that Annapoornamma died in 1980 and she executed a Will bequeathing the said property in favour of 2nd defendant. Hence, there is no serious controversy about the original ownership of the property. The 1st plaintiff was not examined, but his co-son-in-law was examined as PW.1 and Ex.A1, the sale deed dated 15.7.1968 was marked. Incidentally, PW.1 is one of the attestors of the said Ex.A1. PW.1 no doubt deposed about the division of property between Seetharamayya and Sanyasi Rao and Sanyasi Rao sold away his share to 1st plaintiff under Ex.A1. PW.2 also deposed that after the death of Kasamma, the property was partitioned between Sanyasi Rao and Seetharamayya and through him the certified copy of the Settlement Deed dated 12.4.1919 was marked as Ex.A2. DW.1 no doubt deposed that Perumalla Annapoornamma gave the plaint schedule property to him for cultivation as tenant and thus he is the cultivating tenant of the said Annapoornamma and the 2nd defendant and that he is not the cultivating tenant under the 1st plaintiff at any point of time. DW.2, the 2nd defendant, deposed that Annapoornamma got the property from her father Seetharamayya with absolute rights and Annapoornamma executed a Will in 1980 bequeathing the suit property to her. The said Will was marked as Ex.B3. DW.3 is the attestor of Ex.B3, who deposed about Annapoornamma executing Ex.B3- Will. The scribe of Ex.B3 was examined as DW.4, who had deposed about Annapoornamma affixing her thumb mark on Ex.B3 in his presence. Thus, ultimately Annapoornamma got the schedule property in pursuance of Ex.A2-gift settlement deed with full rights. It is needless to say that Ex.A2 is dated 12.4.1919, registration extract of settlement for Rs. 400/- executed by Dulipala Venkata Rama Krishna in favour of Kasamma. The contents of the said document being self-explanatory and also not being in serious controversy, the said aspect need not be discussed any further.

12. Except on the aspect of Ex.A2 and the recitals thereunder and whether the said estate devolved ultimately on the deceased-Annapoornamma as enlarged absolute estate or not, the other questions are not in serious controversy. There is no serious controversy relating to the Will dated 8.2.1980 executed by Perumalla Annapoornamma in favour of A.Laxmikanthamma. It is needless to say that the said document was proved in accordance with law. In the light of the stand taken by the plaintiffs relating to tenancy, the Courts below rightly

negated the relief of recovery of possession.

13. Section 14 of the Act reads as hereunder:

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 device, or at a petition 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 prescribed a restricted estate in such property.

14. The recitals of the document as already specified above being self-explanatory, they are not in serious controversy. A similar question had fallen for consideration before the Apex Court in Balwant Kaur case (1 supra), whereunder the Apex Court at paragraph 19 held as hereunder:

Under the proviso to Section 19(1) the words used are "(a) from the estate of her husband or her father or mother" and they mean that she has a right -- apart from the right she has against the estate of her husband -- a personal right against her father or mother during their respective lives. The words "the estate of" before the words "her husband" are not to be read into the latter part of the clause as "estate of her father or mother." What the proviso does here is to create (i) a right against the estate of her husband and also (ii) an independent and personal right against the father during his lifetime (or against the mother) if the daughter is unable to maintain herself out of her earnings or other property etc. That right against the father during his lifetime can be enforced against the property he is holding. The legislature has deliberately not used the words "estate of her father" in the proviso (a) to Section 19(1). That right of the widowed daughter is covered u/s 21(vi) read with Section 22(2). We have already referred to that right of maintenance against the estate of her father in Section 22(2) read with Section 21(vi). If indeed we read the words "estate of" before the word "father" in Section 19(1)(a) then Section 22(2) read with Section 21(vi) would become otiose. That is why we say that the Proviso (a) to Section 19(1) creates a personal right in favour of the widowed daughter against her father during his lifetime. Any property given in lieu thereof, during his lifetime or to go to her after the father's life time would certainly fall u/s 14(1) of

the Hindu Succession Act, 1956 that being in lieu of a pre-existing right during the father's lifetime.

Strong reliance was placed on Ram Vishal (dead) by LRs case (3 supra), wherein the Apex Court while dealing with Section 14(1) Explanation and "property possessed by a female Hindu" observed that she must not only be possessed of the property but a pre-existing right is a sine qua non for conferment of a full ownership u/s 14 of the Act and a mere right of maintenance without actual acquisition in any manner not sufficient to attract Section 14 of the Act, and in the absence of anything to show that the widow had got possession of share in the joint family property in lieu of maintenance or in arrears of maintenance or that there was a partition of the property and that in such partition, she had been given the property, held that the widow had no right at all which could fructify into full ownership u/s 14 of the Act. The Apex Court, in fact, referred to Kusumgauri Vs. Umiben and Others, and Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others, and distinguished Raghubar Singh and Others Vs. Gulab Singh and Others, .

15. On a careful analysis of the facts in Ram Vishal (dead) by LRs (3 supra), the said decision is distinguishable from the facts of the present case. It is no doubt true that the decision in Balwant Kaur v. Chanan Singh AIR 2000 S.C. 1908 (supra) and also Ram Vishal (dead) by LRs and Ors. v. Jagan Nath and Anr. : (2004)9SCC302 (supra) are the decisions of the Apex Court of two Judge-Benches. It is also true that the decision in Ram Vishal (dead) by LRs and Ors. v. Jagan Nath and Anr. : (2004)9SCC302 (supra) is a later one, but the said decision not only is distinguishable on facts but the said decision is not direct on the point whereas the decision in Balwant Kaur v. Chanan Singh AIR 2000 S.C. 1908 (supra) is direct on the point and clearly applicable to the facts of the present case.

16. Apart from this aspect of the matter, one essential fact to be considered in the present case is that the suit itself was instituted for declaration and recovery of possession. The tenant-1st defendant had taken a specific stand supporting the version of the 2nd defendant. That would go to show that by virtue of the gift deed and subsequent thereto, the beneficiary under the gift deed and the persons claiming through her had been in possession and the evidence of the tenant clearly supports this version. This is the crucial aspect on which this Court is of the considered opinion that the facts in Ram Vishal (dead) by LRs and Ors. v. Jagan Nath and Anr. : (2004)9 SCC 302 (supra) are distinguishable. Hence, viewed from any angle this Court is of the considered opinion that the plaintiffs, who are claiming title through Sanyasi Rao, would not be entitled to the relief of declaration of their title for the reasons referred to supra. Hence, the appellants-defendants are bound to succeed.

17. Accordingly, the Second Appeal is hereby allowed. Inasmuch as the parties have been fighting this litigation on the question of the applicability or otherwise of Section 14(1) of the Act referred to supra, the parties to bear their own costs.