

(2007) 09 AP CK 0117
In the Andhra Pradesh High Court
Case No : SA No. 578 of 1998

Yenamadala Venkatalakshmi

APPELLANT

Vs

Achanta Posamma (died) and Others

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Citation : (2008) 1 ALD 533

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

Bench : Single Bench

Advocate : A. Ramalingeswara Rao, for the Appellant; M. Lakshmana Sarma, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—The appellant, the second defendant in O.S. No. 107 of 1980 on the file of Subordinate Judge, Rajahmundry and the second appellant in A.S. No. 16 of 1991 on the file of I Additional District Judge, East Godavari, Rajahmundry, being aggrieved of the decrees and judgments made by both the Courts decreeing the suit declaring the title of the plaintiffs 2 to 4 in relation to the plaint schedule property and granting perpetual injunction as prayed for, had preferred the present second appeal.

2. The second appeal was dismissed for default against R-8, R-10, R-11 and R-12. The substantial questions of law, which had been pointed out by the learned Counsel representing the appellant, are as hereunder:

(i) Whether a suit for declaration is maintainable after 24 years, after execution of deed of settlement seeking a finding annulling such settlement deed?

(ii) Whether in respect of the property given in Pasupukumkuma to a daughter at the time of marriage can be recovered back when the daughter dies, leaving her daughter as sole heir?

(iii) Whether the plaintiff who has been managing the property on behalf of

minor grand-daughter can be said to be in occupation of the property in her own right, when admittedly the said property was given towards Pasupukumkuma to the minor daughter's mother at the time of marriage?

(iv) Whether a registered settlement deed executed by the parties can be declared as null and void without any proper evidence for the same?

(v) In the facts and circumstances of the case whether Chellayamma in whose favour the settlement deed was executed becomes absolute owner after Hindu Succession Act came into force or the plaintiff becomes absolute owner by succession in conflict with the said provisions?

3. Sri A. Ramalingeswara Rao, the learned Counsel representing the appellant would maintain that though the appeal was dismissed for default against certain of the respondents, they are not contesting parties, and hence, the second appeal to be decided on merits.

The learned Counsel also had taken this Court through the respective pleadings of the parties, the evidence available on record and pointed out to the relevant findings recorded by the Courts of first instance and also the appellate Court and would maintain that when specific stand was taken relating to the non-existence of Venkatarao and when no acceptable evidence is forthcoming, both the Courts totally erred in recording such findings as though there was one Venkatarao and by virtue of death of Venkatarao, the mother became the heir.

The Counsel also would further contend that it is not as though the execution of the settlement deed is in controversy and in fact the same was acted upon, and in relation to one item, there is some controversy and after a long lapse of time, doubting the recitals in the said settlement deed-Ex. B1 especially in the light of Ex. A12, an unregistered partition list, definitely cannot be sustained.

The learned Counsel also had pointed out that the findings recorded even in relation to Ex. A17 cannot be sustained for the reason that Ex. B1 is dated 1.4.1956, whereas Ex. A17 is 13.7.1960. The Counsel also commented that Ex. A12, being an unregistered partition list, said to be of the year 1948, the same is definitely suspicious and antedated one, and in the light of the same, the appellant is bound to succeed.

4. Per contra, Sri M. Lakshmana Sarma, the learned Counsel representing the contesting respondents, would maintain that the second appeal was dismissed for default against R8, R10, R11 and R12 and in the light of the same, the second appeal is liable to be dismissed in limine .

The learned Counsel, while further elaborating the submissions, would maintain that it cannot be said that Ex. A12 is an antedated one brought into existence for the purpose of the present litigation, in the light of the clear evidence available on record and also the concurrent findings recorded by both the Court of first instance and the appellate Court as well.

The learned Counsel also would explain that the recitals of Ex. A17 would amply further strengthen Ex. A12 and the prior partition between the members of the family long prior to Ex. B1, dated 1.4.1956. Even otherwise, the learned Counsel would submit that in the light of the voluminous oral and documentary evidence available on record in favour of the prior partition as evidenced by Ex. A12 and also the possession and enjoyment of the said item of the property especially in the light of the concurrent findings recorded by both the Courts below, the second appeal is liable to be dismissed.

5. Heard the Counsel on record and perused the findings recorded by the Court of first instance and also the appellate Court.

6. The plaintiff-Achanta Posamma instituted the suit for declaration of title and for perpetual injunction in relation to the plaint schedule property. The said plaintiff died and plaintiffs 2 to 4 were added as legal representatives of the first plaintiff after her death on 12.11.1985 as per the orders in IA No. 268 of 1986, dated 23.6.1990. The suit filed by the plaintiff was resisted by the second defendant by filing a written statement in detail, and the Court of first instance, having settled the issues, recorded the evidence of P.Ws. 1 to 4, D.Ws. 1 to 4, marked Exs. A1 to A17, Ex. C1 and C2 and also Exs. B1 to B5, and came to the conclusion that plaintiffs 2 to 4 are entitled for the declaration and also for perpetual injunction as prayed for. Aggrieved by the same, the defendants preferred A.S. No. 16 of 1991 on the file of the I-Additional District Judge, East Godavari, Rajahmundry and the appellate Court also confirmed the same. Aggrieved by the said judgment and decree made by the appellate Court, the present second appeal had been preferred only by the second appellant in the said appeal, the second defendant in the said suit. Though those parties are shown as parties in the present second appeal, as against certain of the parties, this second appeal was dismissed for default as already specified supra.

7. The plaintiff pleaded in the plaint as hereunder:

Gangaraju, the husband of the plaintiff, begot four sons i.e., Subbarao, Veerraju, Satyanarayana alias Satyam and Venkatarao and four daughters including Chellayamma, who is the wife of D1, and the mother of D2. Gangaraju and his four sons divided their family properties orally, in June, 1948 and recorded the partition list on 21.6.1948 (Ex. A-12). Venkatarao, the last son of plaintiff and Gangaraju, died intestate in November, 1953, without marriage. The surviving sons of the plaintiff raised a dispute before the husband of the plaintiff, that the husband of the plaintiff and the three surviving sons are entitled to 1/4th share each, out of the property of late Venkatarao. At that time, the marriage of Chellayamma was settled with the first defendant and on the suggestion of Veeranna, who is the father of the first defendant and a close relative of the plaintiff, the share of Venkatarao was included in the share of the property given to D1's wife Chellayamma, towards her "Pasupukumkuma", at the time of her marriage, and a settlement deed dated 1.4.1956 was executed (Ex. B1). The plaintiff was not aware that she was the only Class-I heir of late Venkatarao, by

the date of the settlement deed dated 1.4.1956. Subbarao, Veerraju and Satyanarayana alias Satyam took possession of the property that fell to the share of late Venkatarao constituting the plaint schedule property by obstructing Gangaraju, their father, in spite of nominal inclusion of the plaint schedule property in the settlement deed dated 1.4.1956 in favour of Chellayamma, the wife of D1. Notices were exchanged between the parties in this regard. As it was advised that it is the plaintiff that is entitled to the property of late Venkatarao, the plaintiff, ultimately, was put in possession of the schedule property by the children, along with two other small items, which fell to the share of Venkatarao during the partition of 1956. Chellayamma died in about 1959 leaving D1 and her daughter D2 as her sole heirs. D2 was a small child at the time of the death of Chellayamma and that plaintiff, therefore, brought up D2 and performed the marriage of D2. D2 gave birth to three children. All the deliveries of D2 were attended to by the plaintiff. When the plaintiff attended the third delivery of D2 at Raghudevapuram, where she has been residing with her husband, the plaintiff went with a newly purchased gold chain weighing 12 sovereigns, which the plaintiff intended to present to her third daughter's daughter. She handed over the gold chain to the second defendant for safe custody, but, the second defendant refused to deliver it back to the plaintiff on demand. While so, the husband of D2 threatened the plaintiff in about June, 1980, that he would take possession of the plaint schedule property forcibly. In the mediation brought by the plaintiff regarding the gold chain, D2 admitted the receipt of the gold chain, but contended that she would deliver the gold chain, only if the plaint schedule property is delivered to her. In July, 1980, the second defendant sent heirlings to plaint schedule property to eject Pothuri Satyanarayana, the tenant of the plaintiff, but, the attacks and attempts of D2 were thwarted. The plaintiff apprehends further danger from the hands of the defendants and prays for a declaration of title of the plaintiff in the schedule property with consequential perpetual injunction restraining the defendants from interfering with the plaint schedule property, and with costs.

8. The second defendant filed written statement, which was adopted by the first defendant, wherein the following averments were made:

The relationship between the plaintiff and the mother of D2 were admitted. It is contended that the plaintiff did not beget any son by name Venkatarao. The alleged family partition of 1948 was denied. It is contended that Chellayamma was settled with the whole of the plaint schedule property and other properties by settlement deed dated 1.4.1956. (In other words, D2 contends that no part of the settlement deed was nominal). Chellayamma, allegedly, took possession of the property covered by the settlement deed dated 1.4.1956 and that she died in 1960 since which time, the plaintiff had been managing the schedule property on behalf of the second defendant till the marriage of the 2nd defendant in 1972, merely as guardian of D2. At the time of the marriage of D2, the plaintiff delivered possession of Ac. 1-89 cents of land situated in S. No. 234/3 Katavaram and continued to manage Ac. 2.18 cents of land situated in S. No.

208/2B, Katavaram, as the agent of D2. As the 2nd defendant forced the plaintiff to render accounts and deliver possession of Ac. 2-18 cents of land, inclusive of the plaint schedule property, this suit was laid. D2 cultivated the schedule lands. Possession of schedule lands were delivered to the 2nd defendant in 1979 and 2nd defendant delivered the schedule property on 1.5.1980 to Y. Yesayya and N. Ramulu of Raghudevapuram, on a rent of Rs. 1,000/- per acre per annum. Settlement deed dated 1.4.1956 is valid and binding on all the parties. The rights of the plaintiff, if any, have been extinguished long back and the suit is barred by limitation. The valuation of the suit and the Court fee paid is incorrect. The suit, therefore, is liable to be dismissed.

9. On the strength of the respective pleadings of the parties, the following issues were settled by the trial Court:

(1) Whether late Gangayya and his sons divided their family properties in June, 1948 as contended by the plaintiff?

(2) Whether late Venkatarao's share of property was nominally included in the gift deed dated 1.4.1956 executed by him in favour of Chellayamma and never intended to be acted upon, as contended by the plaintiff?

(3) Whether the plaintiff managed the suit properties as an agent of 2nd defendant, as contended by him

(4) Whether the plaintiff is entitled for the declaration of title in respect of the suit property?

(5) Whether the plaintiff is entitled to the permanent injunction prayed for?

(6) To what relief?

10. As already referred to supra, the plaintiff died and the legal representatives were brought on record. On appreciation of the oral and documentary evidence, P.Ws. 1 to 4 and D.Ws. 1 to 4 were examined and Exs. A1 to A17, Ex. C1, Ex. C2 and Exs. B1 to B5 were marked. After recording findings, the Court of first instance decreed the suit. The matter was carried by way of appeal A.S. No. 16 of 1991 on the file of I-Additional District Judge, East Godavari, Rajahmundry and the appellate Court at Para 9 framed the following points for consideration:

(1) Whether the finding of the lower Court that late Gangayya and his sons divided the joint family properties in 1948 as contended by the plaintiffs is erroneous, if so, whether the same is liable to be interfered with?

(2) Whether the finding of the lower Court that the share of late Venkatarao was nominally included in Ex. B1 gift deed and Ex.B1 is invalid even otherwise, as the 1st plaintiff, the owner of that part of the property of late Venkatarao did not execute Ex. B1 in favour of late Chellayamma is erroneous, if so, whether the same is liable to be interfered with?

(3) Whether the finding of the lower Court that the 1st plaintiff was in possession

of the plaint schedule property by the date of the suit not as the agent of the 2nd defendant, but in her own name is erroneous, if so, whether the same is liable to be interfered with?

(4) Whether the finding of the lower Court that the plaintiffs 2 to 4 are the legal representatives of the 1st plaintiff and that therefore, they are entitled to the title over the plaint schedule property and they are entitled to the declaration of title to the plaint schedule property is erroneous, if so, whether the same is liable to be interfered with?

(5) Whether the finding of the lower Court that the plaintiffs were found to be in possession of the plaint schedule property and they are entitled to the permanent injunction as prayed for is erroneous, if so, whether the same is liable to be interfered with?

(6) To what relief?

11. The appellate Court recorded findings commencing from Paras 11 to 22 and ultimately dismissed the appeal, and aggrieved by the same, the second defendant alone had preferred the present second appeal. The principal contention advanced by the learned Counsel for the appellant is that Ex. A12-partition list is created for the purpose of defeating Ex. B1 document executed by late Gangaraju by virtue of which he had gifted away the suit schedule land to his daughter Chellayamma, who is the mother of the second defendant. It is also the specific stand taken by the Counsel representing the appellant that there is no son by name Venkatarao born to Gangaraju, and Gangaraju had only three sons i.e., Subbarao, Veerrajju and Satyanarayana and only with a view to defeat Ex. B1, this episode of existence of Venkatarao had been introduced.

The evidence of P.Ws. 1 to 4 is available on record, which would go to show that Gangaraju had four sons and Venkatarao was his fourth son. P.W. 3, the second son of the first plaintiff and the said Gangaraju, had categorically deposed relating to Ex. A12-partition list evidencing the division of the joint family properties between him and his brothers. This witness also deposed about the other details. The evidence of P.W. 4-Achanta Subbarao and also Ex. A17, dated 13.7.1960, the registered sale deed executed by Achanta Subba Rao and another in favour of Chittoori Baburao, had been taken into consideration and findings in detail had been recorded by both the Court of first instance and also the appellate Court that in the light of the evidence of P.Ws. 1 to 4 and in particular Ex. A12 and Ex. A17, the rights claimed, if any, by the appellant under Ex. B1 cannot be sustained. It is needless to say that predominantly these are findings relating to facts and concurrent findings had been recorded by both the Court of first instance and also the appellate Court. Both the Courts also had taken into consideration the evidence of D.W. 1 the appellant herein, the second defendant, and also D.Ws. 2, 3 and 4 and had appreciated the tax receipts Exs. A1 to A11, and apart from Exs. A12 to A17, further had appreciated Ex. A13-registered Will, dated 30.3.1980, and also the notices Exs. A14, A15 and Ex. A16-postal

acknowledgement. Ex.CI is the receiver's report and Ex. C2 is the auction list. Ex. B1 is the gift deed, dated 1.4.1956, and no doubt the principal controversy is that Ex. A12 was brought into existence antedated as though it is of the year 1948 to defeat Ex. B1, which is of the year 1956. It is true that Ex. B1 is a registered document and Ex. A12 is an unregistered partition list. But, however, in the light of the ample oral and documentary evidence otherwise available on record and the concurrent findings recorded by both the Courts below, the said findings cannot be disturbed in a second appeal. Exs. B2, B3, B4 and B5 also had been considered by both the Courts. Though certain submissions had been made that no acceptable evidence relating to the alleged existence of Venkatarao had been produced before the Court, in the light of Ex. A12, Ex. A17 and also the clear evidence of P.Ws. 1 to 4 relating to the same, Gangaraju had a son by name Venkatarao cannot be disbelieved at any rate. This is also predominantly a question of fact and since the concurrent findings had been recorded by both the Courts below, this Court is not inclined to disturb the said findings in a second appeal.

12. Accordingly, the second appeal shall stand dismissed. However, in the facts and circumstances, the parties to bear their own costs.