

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

APPEAL SUIT No. 2074 of 1995

JUDGMENT:

The unsuccessful plaintiff in O.S.No. 8 of 1989 on the file of the Court of the Subordinate Judge, (hereinafter referred as trial court), Vikarabad, Rangareddy District, preferred this appeal challenging the decree and judgment passed by the trial court, wherein the suit filed by the plaintiff for partition of the schedule property was dismissed.

For convenience of reference, the ranks given to the parties before the trial court will be adopted throughout the judgment.

The plaintiff filed this suit for partition and separate possession of the suit schedule property into two equal shares and for allotment of one such share to the plaintiff, alleging that the schedule property situated at Gubbadi Pathepur Village, belongs to her father Sama Parma Reddy, and she is the daughter of the plaintiff and first defendant are the daughters of said Parma Reddy, who died intestate leaving behind them to succeed his property.

The second defendant is the husband of the first defendant. Sama Parma Reddy had no male issues and the plaintiff and second defendant being the female issues alone succeeded the property. During the lifetime of Parma Reddy he performed the marriage of D.1 with the second defendant and lived with Parma Reddy due to his sickness. Taking advantage of the situation, the second defendant developed vested interest in the schedule property alone and obtained Patta under A.P. (Telangana Area) Abolition of Inams Act, 1955 (for short, 'the Act') in his name for suit schedule property.

The second defendant used to pay amount and grains towards the share of plaintiff upto 1988 but refused to pay her share, thereafter. There upon plaintiff felt that it is not safe to continue jointly with the defendant and demanded for partition of the schedule property. But the defendants 1 and 2 did not cooperate for partition of the schedule property. Hence, the present suit.

Defendants 1 and 2 filed written statement denying the relationship between the plaintiff and defendants and her very relationship with Parma Reddy as daughter contending that D1 has no brother or sisters and she alone is the daughter of Parma Reddy, thereby the plaintiff is not entitled to claim any share in the property.

It is further contended that the second defendant was taken into illatom adoption, as he used to look after the family affairs, including the agriculture. She also denied the ownership of Parma Reddy over the schedule property. She specifically contended that during settlement operation, the schedule property was allotted to the second defendant and issued occupancy right certificate in his favour under the provisions of the Act. Thereby, he became the absolute owner of schedule property and denied the right of the plaintiff to claim any partition, as the schedule property belongs to D.2 in view of occupancy certificate issued in his favour and prayed to dismiss the suit.

Basing on the above pleadings, the trial court framed the following issues:

1. Whether the Plaintiff is the daughter of Late Parma Reddy?
2. Whether the Late Parma Reddy was the owner of the suit lands?
3. Whether the Plaintiff was being given the grains and paying the cash as alleged in the Plaint?
4. Whether the Plaintiff belongs to Reddy Community?
5. Whether the Plaintiff has got cause of action to file the suit?
6. Whether the Plaintiff has to pay the Court Fee U/s.34 (1) of the Court Fee Act when the suit property is in possession of D.2?
7. Whether the defendant no.2 is illatam son-in-law of Late Parma Reddy, if so what is its effect?
8. Whether the D.2 purchased the S.No.12 and 20/అ, if so what is its effect?
9. What is the effect of the ownership certificate and in-respect of Sy.Nos. 13/అ, 14/అ, 15/అ, and 17/అ, of Gubbadi Fathepur in favour of defendant No.2?
10. Whether the suit is within time?
11. Whether D.2 accrued the prescriptive title as alleged in W.S.

12. To what relief?

During the course of trial, on behalf of the plaintiffs, P.W.s.1 to 4 were examined and Ex.s. A.1 to A.4 were marked and on behalf of the defendants, D.W.s. 1 to 5 were also examined, but no documents were marked.

Upon hearing argument of both counsel, considering oral and documentary evidence on record, the trial court held that the Plaintiff is the daughter of Parma Reddy and sister of the first defendant and sister-in-law of the second defendant, however, it is held that suit property is the separate property of second defendant in whose name Occupancy Certificate was issued in the settlement operations under the provisions of A.P. (Telangana Area) Abolition of Inams Act, and declined to pass decree for partition of schedule property into two equal shares and allotment of one such share to the plaintiff.

Aggrieved with the decree judgment in O.S.No. 8 of 1989, the unsuccessful plaintiff preferred this appeal on various grounds mainly contending that plaintiff is the daughter of Parma Reddy, who is the owner of schedule property, and the trial court would not have dismissed the suit for partition, since Ex. A.4 was obtained by playing fraud and it is not valid in the eye of law, since the trial court did not appreciate this contention in proper perspective, the plaintiff prayed this court to set aside the decree and judgment passed by the trial court and to pass a decree in her favour.

During the pendency of this appeal, the first defendant died and her legal heirs brought on record as respondent nos. 3 to 6.

During the course of arguments, learned counsel for the plaintiff contended that the Occupancy Certificate, which was marked as Ex.A.4, obtained under A.P. (Telangana Area) Abolition of Inams Act is invalid under law as it was obtained by playing fraud on the Tahasildar under A.P. (Telangana Area) Abolition of Inams Act and it is not valid in the eye of law, as such, he will not become the absolute owner of the property. Consequently, the first defendant is the co-owner of the

property along with plaintiff, thereby the plaintiff is entitled a decree for partition of the schedule property into two equal shares and for allotment of one such share to her.

None appears for the respondents despite serving of notice.

Considering the contentions of learned counsel for the plaintiff and after perusing the oral and documentary evidence on record including the judgment, the sole point that arose for consideration is:

Whether the schedule property is the joint family property of D.1 and D.2, if so, is it liable for partition?

Point:

Undisputedly, D.1 and D.2 are the wife and husband and D.1 is the daughter of Parma Reddy. Initially the defendant denied relationship of plaintiff with Parma Reddy, while D.1 claiming to be the sole legal heir of the said Parma Reddy, denied the contention of the plaintiff that she is the daughter of Parma Reddy. But the trial court after elaborate analysis of evidence on record held that Plaintiff is the daughter of Parma Reddy and the said finding attained finality, since it was not questioned by filing cross objection or a separate appeal by the defendants. Thus the relationship between Plaintiff and defendants 1 and 2 and deceased Parma Reddy is no more in dispute.

The only basis for claiming partition by the plaintiff is that the suit schedule property is the inam land and it was enjoyed by Parma Reddy throughout his lifetime, but D.2 illegally obtained Patta by playing fraud on the Tahasildar. There is no dispute about issue of Patta in favour of D.2 for the suit schedule property, marked as Ex.A.4. According to Section 3 of the Act, notwithstanding anything to the contrary contained in any usage, settlement, contract, grant etc., imams shall be deemed to have been abolished and shall vest in the Government and the person claiming rights by continuous possession is entitled to a Patta on due enquiry under Section 10 of the Act. The date of vesting on Inam land is on the date of notification. The notification was issued on 26.12.1985, vesting the Inam lands on its

abolition on the Government. At best Parma Reddy was entitled to Patta under Section 10 of the Act, which was in occupation during his lifetime. But here no such occupancy right was claimed by Parma Reddy, father of the Plaintiff, and no Patta was obtained under the provisions of the Act.

Ex.A.4 is the Patta issued in favour of D.2 after conducting necessary enquiry by the Revenue Divisional Officer, Vikarabad Division. Even according to the contents of order, Malla Reddy, who is the second defendant claiming to be a son-in-law of Parma Reddy, father of the Plaintiff, who claimed right in the property. The basis for such claim is illatom adoption but the trial court did not frame any issue and record its finding about the validity of illatom adoption of D.2 by Parma Reddy. Assuming for a moment that Patta under Ex.A.4 was obtained by playing fraud claiming to be illatom son-in-law, the procedure for cancellation of such Patta is under Inaam Abolition Act only but not by filing a suit for partition.

There are conflicting decisions regarding jurisdiction of Civil Court to set aside such Patta. In J Pujari Venkatasubbaiah and Ors Vs. Sree Madduleti Narasimha Swami Temple^[1], this court held as follows:

“It is clear from the entries in the Inam Fair Register that the grant is to the deity i.e., the temple and it is for the worship and upkeep of the temple. It is not a case of the grant being given to Poojaris burdened with service to the temple. The matter has been finally decided both by the High Court as well as the Civil Court and it was clearly held that the grant is to the deity and it is not a grant to the Archakas burdened with service. Subsequently ryotwari patta was granted to the temple as per the order. The defendants are not entitled to contend that the decisions of the authorities under the Inams Abolition act are not conclusive. The jurisdiction of the Civil Court is barred. The defendats cannot reagitate the same question in the Civil Court when once it is decided by the authorities under the Inams Abolition Act.”

Thus, this court held that Civil Court has no Jurisdiction to

decide the validity of Patta.

In Sri Rama Swamy & Sri Prasanna Visweswaraswami Temple, Potegunta, Rapur Taluk, Nellore District, rep. by the Managing Trustee of the Board of Trustees of Temple. Vs. Dodlavaram Rajaiah and others^[2], this court held that:

“Declaration only sought by plaintiffs that they are entitled to grant of ryotwari patta by virtue of personal service inam – Even if appeal abates the 7th respondent, entire appeal does not abate.

There cannot be any dispute that if the plaintiffs seek conversion of the inam into ryotwari lands, they have to necessarily approach the authorities under the Inams Abolition Act, and a suit is not a proper remedy. Secondly, no evidence is available.

It is further held that there is no gainsaying that unless its jurisdiction is expressly or impliedly barred, a civil court has jurisdiction to try all suits of civil nature. Express bar is imposed by statute making it clear that a civil court has no jurisdiction to try a suit or proceedings of civil nature. The principle of implied bar of civil court's jurisdiction is inferred when the statute provides appellate redressal mechanism. So to say, when the statute prescribes procedure for conferring a benefit and provides for appellate/original authority, without any doubt, the jurisdiction of the civil court is impliedly barred even if there is no express mention of the same.”

In the present facts of the case under the A.P.(Telangana Area) Inam Abolition Act, a special statute provides remedies for redressal of their grievance by appeal, reference and revision under Sections. 23 and 24 of the Act. According to Section 24 of the Act, ‘any person aggrieved by a decision of the Collector under Section 10 may, within thirty days from the date of decision, or such further time as the prescribed authority may for sufficient cause allow, appeal to the prescribed authority and its decision shall be final’. When special machinery is provided under Sections 27 and 24 of the Act, the jurisdiction of the Civil Court is ousted.

In the present case, the plaintiff claimed share in the property while challenging the Patta marked as Ex.A.4., issued under the

provisions of the Act. For any reason, the plaintiff claimed right over the property by virtue of occupancy rights of Pattadar questioning Ex.A.4., the question of ouster of jurisdiction needs examination in detail. In the present case, the plaintiff claimed partition of property though she admitted that Patta was issued in favour of D.2 claiming to be an illatom son-in-law of Pattedar and plaintiff did not challenge the validity of Ex.A.4. In a suit for partition, a Civil Court cannot decide the title of the third parties, more particularly, when Ex.A.4 was issued under the provision of the Act.

If Patta was issued in favour of any one of the coparcenors, plaintiff is entitled to claim partition of the schedule property in view of the decision of the Apex Court reported in N.Padmamma and Ors. Vs. S.Ramakrishna Reddy and Ors.^[3], and the question of ouster of jurisdiction will not come in the way of the plaintiff to claim partition. But here Patta was granted in the name of D.2 who is neither coparcenor, nor co-owner or joint owner. In such a case partition decree cannot be passed.

Partition in its true notation of an undivided mitakshara family, no individual member of that family whilst it remains undivided, can predicate of the joint property, he that particular member has a certain definite share, one third or one fourth. Partition, according to that law, consists in defining the shares of the co-parcenors in the joint property. Once the shares are defined, whether by an agreement between the parties, or otherwise the partition is complete. After the shares are so defined, the parties may divide the property by metes and bounds or they may continue to live together and enjoy the property in common as before. The property ceases to be joint and immediately the shares are defined and henceforth the parties hold the property as tenants-in-common. A disruption of joint family status by a definite and unequivocal indication to separate implies separation in interest and in right although not immediately followed by a defacto actual division of the subject-matter.

The Apex Court relying on the decisions of M.K.Stremann Vs. Commissioner of Income Tax, Madras High Court^[4], Commissioner of Income Tax Vs. Keshavlal Lallubahi Patel^[5], held as follows:

“Obviously no question of transfer of assets can arise when all that happens is separation in status, though the result of such severance in status is that the property hitherto held by the coparcenary is held thereafter by the separated members as tenants in common. Subsequent partition between the divided members of the family does not amount either to a transfer of assets from that body of the tenants-in-common to each of such tenants-in-common.”

Partition is really a process and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the sharers had an antecedent title and therefore no conveyance is involved in the process, as a conferment of a new title is not necessary. Similar question came up before this court in Cherukuri Eswaramma Vs. Controller of Estate Duty^[6], this court placing reliance on the decision of Madras High Court referred supra, held as follows:

“Partition, therefore, is really a process in and by which a joint enjoyment is transformed into an enjoyment in severalty. Each one of the sharers had an antecedent title and therefore no conveyance is involved in the process as a conferment of a new title is not necessary.”

Punjab and Haryana High Court also takes similar view in Kulbushan and Brij Bhushan Vs. Controller of Estate Duty^[7].

In view of the principles laid down in the decisions referred supra, it is clear that partition is nothing but a process in and by which joint enjoyment is transformed into an enjoyment between coparcenors or co-sharers or joint sharers. Here, Patta, marked as Ex.A.4 was issued to D.2, which attained finality, is neither coparcenor nor co-sharer or co-owner of the schedule property. Hence, the plaintiff is not entitled to claim partition of the schedule property against D.2, who is the Pattedar under Ex.A.4. Therefore, the suit for partition is not

maintainable against D.2, who is the Pattedar in Ex.A.4, on the sole ground that the plaintiff is not entitled any relief in this suit.

The trial court on analysis of entire material available on record, oral and documentary evidence, more particularly, based on Ex.A.4 concluded that second defendant is neither coparcenor nor co-owner or joint owner of the property. The plaintiff is not entitled to claim partition of the schedule property rightly.

After considering the entire material available on record, I find no ground warranting interference in the Judgment of the trial court as the second defendant is the absolute owner of property under Ex.A.4 and the property belonging to third party other than co-parcenor or co-owner or joint owner is not liable for partition. Therefore, the appeal is devoid of merits and deserves to be dismissed. The point is hold in favour of the defendants and against the plaintiff.

In view of my foregoing discussion, I find that the appeal is devoid of merits. In the result, the appeal is dismissed.

Miscellaneous petitions pending, if any, shall stands disposed of along with this appeal.

M.SATYANARAYANA MURTHY, J

29.06.2015

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[\[1\]](#) 1993 (3) ALT 287

[\[2\]](#) 2008 (4) ALT 818

[\[3\]](#) AIR 2008 SC 2834

[\[4\]](#) 1961 41 ITR 297

[\[5\]](#) 1961 41 ITR 297

[\[6\]](#) [1968] 69 ITR 109

[\[7\]](#) (1973) ILR 2 Punjab and Haryana 79