

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

S.A.No.742 of 2014

ORDER:

Heard Sri V.Sreeranga Rao, learned counsel for the appellants and Sri R.V.Nagabhushana Rao, learned counsel for respondent Nos.1 and 2.

2. This Second Appeal is preferred against the judgment and decree of the Additional District Judge, Hindupur dt.06-07-2009 in A.S.No.9 of 2003 confirming the judgment and decree dt.21-10-2002 in O.S.No.206 of 1996 of the Senior Civil Judge, Hindupur. The appellants herein are plaintiffs 2 to 4 in the suit.

3. The parties will be referred to as per their array in the suit.

4. The subject matter of the suit are plaint A, B and C schedules consisting of wet and dry lands as well as two houses both at Katepalli village.

5. Defendant Nos. 1 and 3 are the sons of 1st plaintiff and 2nd defendant is his daughter. 2nd plaintiff is the son of 3rd defendant and one Anjaneyulu is the another son of 3rd defendant. Plaintiff Nos. 3 and 4 are the sons of Anjaneyulu.

6. The 1st plaintiff originally filed O.S.No.26 of

1994 on the file of Additional District Judge, Hindupur for declaration of his title to the plaint schedule property and for permanent injunction restraining the defendants from interfering with his possession and enjoyment of the plaint schedule property. The said suit was transferred to the Court of the Senior Civil Judge, Hindupur and renumbered as O.S.No.206 of 1996.

7. Pending suit, 1st plaintiff died and plaintiff Nos. 2 to 4 were added as his legal representatives vide order dt.31-12-1999 in I.A.No.413 of 1997.

8. In the plaint, 1st plaintiff contended that he was a native of Karavulapalli, h/o.Mandalapalli and his father Narayanappa had no property at all; that he had three brothers who had migrated to other places to eke out their livelihood; and that 1st plaintiff shifted to Katepalli about 40 years prior to the filing of the suit when his son, the 3rd defendant was aged about three years. He alleged that he acquired skill in construction work such as construction of bridges and houses etc and was doing those works on contract basis and had saved money and with those savings purchased Ac.4.00 cts of land in Sy. No.104/3 at Palasamudram for Rs.35/- on 01-06-1938; that he purchased item-2 of plaint A schedule under registered sale deed dt.30-05-1955 ; that he purchased item-1 of plaint A schedule under registered sale deed

dt.13-07-1944 and he was assigned the plaint A schedule property by the Tahsildar subsequently under two different D-Form pattas; that he was also given ryotwari patta for item-1 of B schedule along with three others to an extent of Ac.3.18 cts; and that the joint patta for Ac.8.11 cents in Sy.No.23/2 was given to him and 2nd defendant. He alleged that himself and 2nd defendant were enjoying Ac.5.00 cts and Ac.2.80 cts separately; that 2nd defendant at the instance of 1st defendant tried to encroach upon item-2 of B schedule; that he was given ryotwari patta for items 3 and 4 of B schedule. He further contended that he purchased house sites and constructed the house shown in the B schedule and also the items mentioned in C schedule. Thus, he contended that he acquired all the plaint schedule properties with his own money and defendants have no right over it. He further contended that 1st defendant did not get proper education and that he brought up the defendants and performed their marriages, but they had no right whatsoever and he is entitled to dispose them of as per his will and volition. He claimed that he gifted some items to 3rd defendant; that the 1st defendant, after his marriage lived elsewhere at several places and finally settled at Penukonda , constructed a house and kept it in the name of his wife. He also alleged that 1st defendant with his counsel and one Sarveswaraiah came to Katepalli and threatened him

and 3rd defendant and obtained thumb impression of 1st plaintiff and signatures of 3rd defendant on white papers and then got issued a notice dt.26-03-1994 with false allegations claiming the suit properties as joint family properties. He stated that he denied the contentions of 1st defendant by issuing reply legal notices. He alleged that defendant Nos.1 and 2 were planning to interfere with his right in the property and therefore he had to file the present suit.

9. As stated supra, the 1st plaintiff died pending suit and on the basis of a registered Will dt.01-07-1994 executed by him, plaintiff Nos.2 to 4 and 3rd defendant were impleaded as parties.

10. The 1st defendant fled a written statement. He denied that 1st plaintiff's father had no property at all and contended that 1st plaintiff and his brothers did have landed property as well as house; they were sold by way of revenue transfers or by taking money and 1st plaintiff had received cash from his brother and acquired the plaint schedule property with that amount. He denied that 1st plaintiff had acquired the plaint schedule property out of the skill in construction works and contended that 1st plaintiff and his ancestors were always living on agriculture. He therefore contended that whatever

properties were acquired by 1st plaintiff, they were all joint family properties and should be treated as joint family properties. He denied the allegation that he was not of any use to the family and that he was doing agriculture work along with 1st plaintiff and 3rd defendant; that his father-in-law was a registered contractor in P.W.D. department and after his marriage, he was encouraged to become a contractor; and that he purchased a tractor by raising a loan from the State Bank of India, Penukonda. He further denied the gift of the properties by 1st plaintiff to 3rd defendant under the registered gift deed dt.06-04-1960 and contended that even if there is any gift, it is not binding since the properties are joint family properties and such gift is void. He also claimed to have discharged certain loans borrowed by 3rd defendant. He contended that payment of land revenue by 1st plaintiff was not in his individual capacity and that this was paid out of the joint family funds as Manager of the joint family. He contended that misunderstandings arose between himself and 3rd defendant and on account of the same, 3rd defendant created certain documents to defeat his rights; that he had demanded for amicable partition and separate possession of his 1/3rd share in all the properties; there was a mediation and settlement of properties on 15-11-1993 by K.Venkataramanappa at Kaligeri and others and it was

decided that each one is entitled to 1/3rd share in the properties. He further contended that it was reduced into writing on 15-11-1993 and signed by 1st plaintiff, 3rd defendant and himself. He contended that he sought division of the properties by metes and bounds and also issued a notice dt.26-03-1994 and that the document dt.15-11-1993 is binding on the plaintiffs and 3rd defendant. He further contended that the Will dt.01-07-1994 allegedly executed by 1st plaintiff in favour of plaintiff Nos.2 to 4 and 3rd defendant is a fabricated one at the instance of 3rd defendant and that 3rd defendant is behind this litigation. He therefore prayed that the suit be dismissed.

11. The 2nd defendant filed a written statement stating that she is interested in item-2 of B schedule as she purchased Ac.3.00cts of land under registered sale deed dt.24-05-1957. She contended that 1st plaintiff also purchased western side land to the west of this land as well as to the east of her land under another registered sale deed dt.24-05-1957 in Sy. No.23/2 and contended that ever since her purchase, she was in possession and enjoyment of the middle portion of the land with specific boundaries. She contended that the suit as framed is not maintainable since the cause of action against her relating

to this site is a separate one and she has nothing to do with the other items of the property.

12. The trial Court framed the following issues on the basis of the above pleadings:

1. Whether the plaintiff is entitled for declaration as sought for?
2. Whether the plaintiff is entitled to seek permanent injunction as sought for?
3. To what relief:

Additional Issues:

1. Whether the registered will dt.01-07-1994 is true, valid and binding on the defendants?

13. The plaintiffs examined P.Ws.1 to 3 and marked Exs.A-1 to A-24. Defendants examined D.Ws.1 to 5 and marked Exs.B-1 to B-4.

14. By judgment and decree dt.21-10-2002, the trial Court dismissed the suit with costs.

15. It held that the plaintiffs could not prove that 1st plaintiff's father had no property and that he did not inherit the property from his father. It held that 1st plaintiff's older brother was Thimmappa and the Daiglot of Mandalapalli village (Ex.B-8) showed that land in Sy. No.217/2 of the said village was recorded in his name. It held that the plaintiffs had failed to show that 1st plaintiff had not inherited the property from his father and that Ex.B-8 produced by 1st defendant shows that 1st plaintiff

got share of money out of sale of ancestral property at his village Karuvulapalli, hamlet of Mandalapalli revenue village. It held that the plaintiffs could not establish that 1st plaintiff had any special skill in construction activity and had not examined anybody with whom the 1st plaintiff had worked.

16. It noticed the admission of P.W.1 i.e. 2nd plaintiff that his father i.e., 3rd defendant, his paternal uncle i.e, 1st defendant and his grandfather i.e, 1st plaintiff had not partitioned the property till the death of his grandfather, that the properties were enjoyed jointly and 1st defendant resided in a separate house at Penukonda. It held that in 1971, 3rd defendant, 1st plaintiff and 1st defendant had raised loan in the Land Mortgage Bank, Hindupur after mortgaging the suit properties jointly and Ex.B-5 is the certified copy of the mortgage deed dt.06-03-1971. It also noted that 3rd defendant who is examined as P.W.3 admitted that he mortgaged the property in the Land Mortgage Bank under Ex.B-4 dt.20-04-1986 and obtained loan for family expenses. It held that if 1st defendant and 3rd defendant had no right in the properties and 1st plaintiff alone was the owner, then there was no need for defendants 1 and 3 to join along with 1st plaintiff to execute Exs.B-4, B-5 and B-9 mortgage deeds and that this clinchingly shows that they did constitute Hindu joint

family and had a joint right in the plaint schedule properties.

17. It also relied upon the fact that monies borrowed by 3rd defendant under promissory notes Exs.B-2 and B-3 from one Gurumurthy were discharged by 1st defendant and this fact was also admitted by 3rd defendant as P.W.3. It held that if 1st defendant had nothing to do with the joint family and he had not actively participated in the affairs of the joint family, he need not have discharged the debts borrowed by 3rd defendant.

18. It also relied on Ex.B-14, the voters list of Katepalli village prepared in 1975 which showed that 1st defendant and his wife were staying along with 1st plaintiff and 3rd defendant and that this indicates that 1st defendant was living jointly with 1st plaintiff and 3rd defendant. It also relied on the fact that 1st plaintiff, 3rd defendant and husband of 2nd defendant were involved in a criminal case; that they were convicted; the matter had gone up to the High Court; the 1st defendant had arranged sureties and engaged advocates in the Courts to defend them; Ex.B-11, money order receipt, shows that he sent money to the advocate engaged at the High Court, Hyderabad for defending his father, his brother in the criminal case; and this also indicated that the family

was joint family.

19. It held that while the plaintiffs contended that Ex.B-1 partition list is forged, they had admitted thumb impression of 1st plaintiff and the signature of 3rd defendant thereon; and they have taken new plea that they have put the said thumb impression and signature on a blank paper, which cannot be accepted. It held that the evidence of D.W.3, who is the attesor of Ex.B-1 and D.W.4 who is the scribe of Ex.B-1, proved that Ex.B-1 is genuine and was executed by 1st plaintiff and defendant no.s 1 and 3. It therefore concluded that the plaintiffs failed to show that the plaint schedule properties are self acquired properties of 1st plaintiff.

20. In this view of the matter, it held that since suit properties are joint family properties of 1st plaintiff, 1st defendant and 3rd defendant, they are all co-owners and there cannot be an injunction in favour of one co-owner against other co-owners. It also held that the Will executed by 1st plaintiff is not valid since the properties are joint family properties and therefore plaintiff Nos.2 to 4 and 3rd defendant did not derive any right in the property under it. It thus dismissed the suit.

21. Questioning the same, the plaintiffs filed A.S.No.9 of 2003 before the Additional District Judge, Hindupur.

22. By judgment and decree dt.06-07-2009, the said Court also dismissed the appeal.

23. The lower appellate Court, on consideration of the oral and documentary evidence, held that there was a joint family consisting of 1st plaintiff and defendant Nos.1 to 3 and that merely because the properties were purchased in the name of 1st plaintiff, it does not mean that they are self acquired properties and not joint family properties; that the conduct of the parties clearly indicated that the properties were not separate properties of 1st plaintiff and that they were joint family properties; and 1st defendant being a coparcener has not abandoned his right therein. It further held that 1st plaintiff could not have executed Ex.A-22 Will in respect of all joint family properties depriving the 1st defendant, a coparcener of his share in the property and that the said Will is not binding on 1st defendant. It also referred to Ex.B-1, the partition list and held that Ex.B-1, being an unregistered partition list cannot be relied upon. However, it held that the evidence on record including the evidence of D.W.1 i.e. 2nd defendant indicates that the family was joint family, that all the properties were treated as joint family properties and therefore, plaintiffs were not entitled to relief of declaration considering the fact that 1st defendant has a joint right in

the property along with 3rd defendant. It held that the trial Court had rightly declined to grant relief of permanent injunction against 1st defendant, who was also co-owner.

24. Questioning the same, this Second Appeal is filed.

25. The learned counsel for the appellant contended that 1st defendant had admitted Ex.B-1 partition list and therefore the Courts below had erred in holding that the family continued to be joint. He further contended that the Courts below were not justified in placing the burden on the plaintiffs to establish about the receipt of share in sale consideration on sale of ancestral properties. He contended that the Courts below could not have dismissed the suit since the existence of joint family nucleus was not proved by defendants. He also contended that merely because financial help or other help was rendered by member of the family to other members of the family, it cannot be presumed that there is a joint family.

26. The learned counsel for the respondents, on the other hand, supported the findings of the trial Court and the lower appellate Court and contended that concurrent findings of fact of both the courts as to the nature of the family and as to the nature of the properties, which have been arrived at on appreciation of evidence,

are binding, and that no substantial question of law arises for consideration of the Second Appeal. He therefore, prayed that the Second Appeal be dismissed.

27. I have noted the submissions of both sides.

28. From the pleadings in the matter, it is clear that the plaintiffs had alleged that the plaint schedule properties are the self acquired properties of 1st plaintiff, while 1st defendant had alleged that the plaint schedule properties were joint family properties. The defendants also contended that there was an oral partition and separate possession among the family members on account of mediation on 15-11-1993 and it was reduced into a partition list Ex.B-1 dt.15-11-1993, but there was no division by metes and bounds.

29. Admittedly the suit is filed for relief of declaration of title of the plaintiffs to the plaint schedule properties and for a perpetual injunction. The above reliefs can be granted only if the plaintiffs have exclusive title to the plaint schedule properties and not otherwise. It is true that there is no presumption in law that property in the name of a member of a joint family is joint family property, and the burden is on the person who asserts that it is joint, to prove the said fact.

30. It is not disputed that the documents on the

basis of which the plaint schedule properties were acquired stand in the name of 1st plaintiff. Although the plaintiffs have contended that 1st plaintiff had acquired special skill in construction activity and that by carrying on the said activity, he earned income and purchased the plaint schedule properties, no material is placed by the plaintiffs in support of the said plea.

31. On the other hand, 1st defendant in his evidence as D.W.2 had filed Ex.B-8 diaglot of Madalapalli village which indicated that land in Sy. No.217/2 was recorded in the name of 1st plaintiff's eldest brother Thimmappa. According to the 1st defendant, the lands in the name of Thimmappa were sold to third parties by way of revenue transfers or by taking money and the 1st plaintiff had received his share of cash from his brother and acquired landed property at Palasamudram in Katepalli village out of the said amount.

32. The 2nd plaintiff who was examined as P.W.2 admitted that his father, 3rd defendant and his paternal uncle, the 1st defendant along with the 1st plaintiff had not partitioned with the properties till the death of 1st plaintiff and that the properties were enjoyed jointly. He also admitted that under Ex.B-5 mortgage deed dt.06-03-1971, the 1st plaintiff and 1st defendant had raised a loan

in Land Mortgage Bank, Hindupur after mortgaging suit property jointly. Likewise, the 3rd defendant who is examined as P.W.3 also admitted that he mortgaged the property in Land Mortgage Bank under Ex.B-4 dt.20-04-1986 along with 1st plaintiff and 1st defendant for family expenses. Ex.B-9 is another mortgage deed dt.29-03-1975 executed by 1st plaintiff and defendant Nos.1 and 3. If really the properties are the exclusive self acquired properties of 1st plaintiff, 1st defendant would not have been made to join the said documents and would not have executed these mortgages.

33. In my opinion, these facts clinchingly establish that the plaint schedule properties are joint family properties and they stood in the name of 1st plaintiff in the revenue records.

34. Moreover, the voters list Ex.B-14 shows that the family of 1st defendant lived along with 1st plaintiff and 2nd defendant at Katepalli. Also certain debts incurred by 3rd defendant (i.e, Exs.B-2 and B-3 demand promissory notes) from one Gurumurthy were discharged by 1st defendant and this fact was admitted by 3rd defendant as P.W.3.

35. The 3rd defendant as P.W.3 also admitted

that 1st plaintiff himself and the husband of 2nd defendant were involved in a criminal case; that they were convicted and the matter went up to the High Court and it was the 1st defendant who arranged sureties and engaged advocates in the Court to defend them. This fact is corroborated by Ex.B-11 money order receipt filed by 1st defendant showing that he sent money to the advocate engaged in the High Court, Hyderabad. If 1st defendant has no interest in the property and the family was not joint, then he would not have helped 1st plaintiff and 3rd defendant in this manner. The 1st plaintiff alone would have discharged the loans of 3rd defendant and financed the defense in the criminal case initiated against himself and 3rd defendant.

36. No doubt Ex.B-1 being an unregistered document may be inadmissible in evidence as held by the appellate Court, but the fact remains that the other documents on record as referred to above clinchingly establish that the plaint schedule properties are not the self acquired properties of 1st plaintiff and that 1st defendant and 3rd defendant also had a share therein as coparceners. Since the properties are not exclusive properties of 1st plaintiff, in my opinion, the Courts below have rightly denied the relief of declaration of title as well as the relief of perpetual injunction to plaintiffs, since no injunction can be granted against the co-owner.

37. I am also of the opinion that 1st plaintiff was not competent to execute Ex.A-22 Will dt.01-07-1994 bequeathing all the plaint schedule properties in favour of plaintiff Nos.2 to 4 and 3rd defendant, thereby depriving 1st defendant of a share therein. Since the property is a joint family property wherein 1st defendant has a share, Ex.A-22 does not bind 1st defendant and the said Will cannot be given effect to.

38. Therefore, I am of the opinion that the Courts below have correctly appreciated the evidence on record and rightly declined to grant relief to the appellants/plaintiffs. The concurrent findings of fact of the Courts below do not warrant any interference by this Court in exercise of its jurisdiction under Section 100 CPC.

39. The Second Appeal accordingly fails and it is dismissed. No costs.

40. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-01-2015

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