

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

CIVIL MISCELLANEOUS APPEAL Nos. 639 and 665 of 2015

-

COMMON JUDGMENT: (*Per Hon'ble Sri Justice A. Shankar Narayana*)

Both these Civil Miscellaneous Appeals are directed against the order dated 02.07.2015 passed in I.A. No.323 of 2014 in O.S. No.738 of 2014 on the file of XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri (for short, 'Court below').

2. Former appeal is preferred by respondent Nos.4 to 6-defendant Nos.4 to 6 as one set, who are admittedly natural brothers of one late Gummadi Pandu Ranga Reddy. Latter appeal is preferred by respondent Nos.1 to 3-defendant Nos.1 to 3 as another set, who are the second wife and daughters of the said Gummadi Pandu Ranga Reddy, who died on 25.03.2005. Respondent No.1, in both the appeals is the first wife of late Gummadi Pandu Ranga Reddy and respondent Nos.2 and 3 in both the appeals are their children as per the stand taken by them as petitioners-plaintiffs before the Court below.

3. For the sake of convenience, we refer to the parties as they were arrayed in the interlocutory application before the Court below.

4. Petitioners filed the original suit for partition of the properties mentioned in Schedules – I, II and III of the plaint and to allot their

respective shares as mentioned in the prayer portion in the plaint, which are unnecessary to mention in detail for adjudicating the controversy in these appeals.

5. According to them (petitioners), marriage between petitioner No.1 and Gummadi Pandu Ranga Reddy took place on 11.08.1983, but since the mother-in-law of petitioner No.1 was harassing her, she started living separately and later, she learnt that her mother-in-law performed the marriage of Gummadi Pandu Ranga Reddy with respondent No.1 and later, he died intestate on 23.03.2005 leaving behind him the petitioners and respondent Nos.1 to 3. Respondent Nos.4 to 6 are natural brothers of Gummadi Pandu Ranga Reddy, whereas respondent Nos.7 to 13 are the children of respondent Nos.4 to 6 and respondent No.15 is the Managing Director of respondent No.14-M/s Radhika Movieplex Private Limited. The petitioners state that respondent Nos.1 to 3 misrepresenting the revenue authorities got their names mutated in the revenue records in respect of suit properties. They also state that respondent Nos.1 to 13 unauthorisedly executed a development agreement-cum-general power of attorney in favour of third party in respect of suit property to deprive their legitimate share. They also state that respondent Nos.1 to 6 fraudulently entered into a family settlement deed dated 25.11.2012 with a mala fide intention to make wrongful gain and though, they got issued a legal notice dated 04.05.2014 requiring the respondents to partition the plaint schedule properties and allot their respective share, they did not come forward and since the respondent Nos.1 to 3 are trying to alienate the suit schedule properties in collusion with respondent Nos.4 to 15 and if they succeed in their attempts, they (petitioners) would suffer irreparable loss and injury leading to multiplicity of proceedings, sought to grant temporary injunction to restrain respondent Nos.1 to 15 from alienating the plaint schedule properties.

6. The petition was dismissed against respondent Nos.7 and 8

as not pressed, whereas respondent Nos.14 and 15 remained *ex parte*. Contesting respondent Nos.1 to 6 and others filed common counter controverting the averments mentioned in the petition. According to their case, late Gummadi Pandu Ranga Reddy married petitioner No.1 on 11.08.1983, but since differences cropped up between them, both of them filed O.P. No.248 of 1984 on the file of I Additional Chief Judge, City Civil Court, Hyderabad, seeking mutual divorce and obtained decree of divorce on 22.02.1985, and thereafter, Gummadi Pandu Ranga Reddy married respondent No.1 on 14.04.1985. They state that petitioner No.1 with the assistance of antisocial elements brought into existence a marriage certificate dated 27.03.1989 showing as if their marriage had taken place on 24.03.1985, and, in fact, no such marriage had ever been taken place after obtaining decree of divorce on mutual consent by them. Respondent Nos.1 to 3 state that they have been residing with the other brothers of late Gummadi Pandu Ranga Reddy, who are respondent Nos.4 to 6, and according to them, petitioner Nos.2 and 3 were not born to petitioner No.1 through Gummadi Pandu Ranga Reddy. They also state that respondent No.1 rendered services to late Gummadi Pandu Ranga Reddy during his ill-health, and during his lifetime itself the agricultural lands were partitioned by an oral partition. They have given the details of extents fallen to the respective shares of each branch in the said oral partition, which, in our view, is unnecessary to elaborate them. Concerning the family settlement, they state that to keep social status, the parties signed on settlement deed. It is also stated by them that the properties were sold by the respondents individually, subsequent to partition and the properties of late Gummadi Pandu Ranga Reddy are to be distributed as per the Will dated 14.11.2002 executed by late Gummadi Pandu Ranga Reddy. Finally, they sought to dismiss the petition with costs.

7. Before the Court below, the petitioners exhibited Exs.P.1 to P.11, whereas, the respondents got marked Ex.R.1, which are all

marked on consent. The Court below, having formulated the point for determination and analyzing the documentary evidence filed by both sides and observing that whether Ex.R.1 was executed only to give social status to the petitioners in the society or otherwise requires to be decided after full fledged trial of the suit and having found that the name of late Gummadi Pandu Ranga Reddy was recorded as father of petitioner Nos.2 and 3 in their school records, favoured the petitioners in acceding to the relief of temporary injunction requested by them.

8. The aforesaid order is questioned by respondent Nos.1 to 3 as one set and respondent Nos.4 to 6 as the other set in these civil miscellaneous appeals. Various grounds have been agitated in the grounds of appeal touching the share claimed by the petitioners and non-registration of family settlement deeds and the granting of injunction on the presumption of lineage in the absence of any evidence in assertion and the rival claims with regard to entitlement, which requires adjudication on the basis of declared marital status and the very maintainability of the suit as the partition itself was effected by an oral partition, which was said to be reduced into writing on 20.01.2002. We are not inclined to probe into the grounds agitated by respondent Nos.1 to 6 in both the appeals, since they require an answer only after a full-fledged trial taking place, but not at the stage of deciding an interlocutory application.

9. But suffice it to say, as can be gathered from the arguments advanced by both sides, a total extent of Acs.44-13 guntas out of Acs.71-33 guntas situated in Turkapally village is still available after alienation of Acs.22-20 cents by the respective respondents individually and Acs.5-00 guntas given under family settlement.

This apart, a total extent of Acs.33-39 gts situated in Devara Yamjal village is still available intact without there being any alienations by the respective parties. Thus, a total extent of Acs.77-52 guntas is available after excluding the alienations referred to in the above.

We even find a patent defect in filing the instant suit by the petitioners

since alienees are not arrayed as defendants-respondents despite the relevant details have been mentioned in the common counter filed by the contesting respondents by way of filing necessary applications. However, the share claimed by the petitioners as plaintiffs in the suit is to the extent of 1/6th share and that too, they are entitled to their respective share in the share to which late Gummadi Pandu Ranga Reddy is entitled, in case they succeed in the suit, in our view, the extent which is available now would be sufficient to satisfy the share to which they are entitled. When viewed in that direction, the injunction granted by the Court below can be restricted to the extent of Acs.44-13 guntas situated in Turkapally village and Acs.33-39 guntas situated in Devara Yamjal village, which remained with the respondents. Thus, we would like to allow both the civil miscellaneous appeals in part, modifying the order passed by the Court below restricting the same to the extents available in various survey numbers shown in the plaint schedule, which are as hereunder:

Survey No. Turkapally village	Remaining land		Survey No. Devara Yamjal village	Remaining land
22/2	Nil		64	13-35
36	Nil		65	11-33
53	Nil		71/2D	0-28
54	1-09		72/E	0-38
55	Nil		73	4-33
56	Nil		74	3-13
57	1-10		Total	33-39
68	3-24			
81	9-00			
82	9-11			
84/2	1-14			
85	4-37			
88	6-23			
89	7-05			
Total	44-13			

10. Accordingly, both the Civil Miscellaneous Appeals are allowed in part by modifying the order impugned passed by the Court

below and the injunction is restricted to the extents shown in the above table. In other words, the injunction granted by the Court below is affirmed only in regard to the extents shown in the above table. Keeping in view, the nature of the suit, we direct the Court below to dispose of O.S. No.738 of 2014, as expeditiously as possible, within a period of eight months from the date of receipt of this order. In case the Court below is unable to dispose of the suit within eight months despite avoiding granting of unnecessary adjournments, it would be proper for it to seek extension of reasonable time. There shall be no order as to costs.

11. As a sequel thereto, miscellaneous petitions, if any pending in the instant civil revision petition, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

October 9, 2015.

SIVA