

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.379 OF 2008

JUDGMENT:

This appeal, under Section 100 of the Code of Civil Procedure, 1908, is filed by the appellants/defendants aggrieved by the judgment and decree, dated 31.12.2007, rendered in A.S.No.89 of 2006 on the file of I Additional District Judge, Karimnagar, whereby the learned Judge dismissed the appeal suit confirming the judgment and decree dated 31.07.2006 rendered in O.S.No.20/2000 by the Senior Civil Judge, Karimnagar.

2. Heard learned counsel for the appellants/defendants and learned counsel for the respondents/plaintiffs and perused the record.

3. Appellants herein are the defendants, whereas the respondents herein are the plaintiffs in the Original Suit.

4. For the sake of convenience, the parties hereinafter are referred to as they were arrayed in the Original Suit before the trial Court.

5. The averments in the plaint are that plaintiff Nos.1 and 2 are the daughters of plaintiff No.3. Plaintiff No.3 is the second wife of late M. Rajaiah. Defendant No.1 is the son and defendant Nos.2 and 3 are the daughters of late M. Rajaiah, born through his first wife Muddasani Narsamma. The suit schedule properties are the ancestral joint family properties of the plaintiffs and defendants. The said M. Rajaiah died intestate leaving behind

him the plaintiffs and the defendants as his legal heirs. The plaintiffs and the defendants are the joint owners and possessors of the suit schedule properties. As the defendants are trying to alienate the suit schedule properties with a view to deprive the share of the plaintiffs and as defendant No.1 is misappropriating the income derived from the suit schedule properties, the plaintiffs requested the defendants for partition of the suit schedule properties. The defendants refused for partition. Hence, the plaintiffs filed O.S.No.20 of 2000 on the file of Senior Civil Judge, Karimnagar, for partition and separate possession of the suit schedule properties.

6. Defendant No.1 filed written statement, which was adopted by defendant Nos.2 and 3, admitting the relationship between the parties to some extent. It is stated that plaintiff No.1 is not born to late M. Rajaiah, but she was born to plaintiff No.3 through her first husband of Parkapalle Village. It is also stated that at the time of marriage of late M. Rajaiah with plaintiff No.3, he accepted plaintiff No.1 as his daughter, though she was not born to him and therefore, plaintiff No.1 is not a member of the joint family. It is also stated that the marriage of defendant Nos.2 and 3 was performed after 1986 and as such, they are coparceners of the family. Plaintiff No.2 is born to plaintiff No.3 through late M. Rajaiah and therefore, she is also a coparcener of the family. It is also stated that late M. Rajaiah has spent about Rs.50,000/- for the marriage of plaintiff No.1. With a view to secure money for the marriage of plaintiff No.2 and also for

other expenses, the late M. Rajaiah gave consent for sale of item Nos.3 to 6 of the plaint 'A' schedule property and to give the sale proceeds derived out of such sale to plaintiff No.3. Accordingly, plaintiff No.3 took the entire sale consideration derived from such sale. After the death of M. Rajaiah, the elders have decided that as plaintiff No.3 has kept the sale proceeds obtained by sale of item Nos.3 to 6 of plaint 'A' schedule property with her, item Nos.1 and 2 of the plaint 'A' schedule property be mutated in the name of defendant No.1. On 20.05.1999, defendant No.1 and plaintiff Nos.1 and 3 have subscribed their signatures/thumb impressions on the document written by one Mogulaiah of Rukmapoor. The plaintiffs accepted for mutation of the lands in favour of defendant No.1 in the revenue records. Further, it was also agreed that defendant No.1 should give produce out of half acre of land to plaintiff No.3 towards her maintenance. Having agreed for the same, the plaintiffs filed the Original Suit, though they are barred from claiming any right in the suit schedule properties.

7. Based on the above pleadings, the trial Court settled the following issues:

- "1. Whether the plaintiff No.1 is not the daughter of Rajesham, therefore not a coparcener?
2. Whether there was any settlement as contended by D-1?
3. Whether the plaintiffs are entitled for any partition and separate possession?

4. To what relief?"

8. During trial, on behalf of the plaintiffs, PWs.1 and 2 were examined and got marked Exs.A1 to A12. On behalf of the defendants, DWs.1 to 5 were examined and Ex.B1 was marked.

9. The trial Court, after considering the oral and documentary evidence available on record, holding that plaintiff No.1 is the daughter of late M. Rajaiah and Ex.B1 will not bar the plaintiffs from claiming share in the suit schedule properties, vide the judgment and decree, dated 31.07.2006, passed a preliminary decree partitioning all the suit schedule properties and allotting equal shares to plaintiff Nos.1 and 2, defendant Nos.1 to 3. The trial Court also held that the plaintiffs and the defendants are entitled to equal share in the share of late M. Rajaiah.

10. Aggrieved by the said judgment and decree, the defendants preferred A.S.No.89 of 2006 before the I Additional District Judge, Karimnagar.

11. The first appellate Court, after hearing both sides, framed the following point for determination:

“Whether the respondents/plaintiffs herein barred from claiming any right in respect of suit schedule properties in view of alleged settlement, dated 20.05.1999, as contended by the appellants herein and if so, whether plaintiff No.1 is not the co-parcener of late Rajaiah to claim for share.”

12. The first appellate Court, having examined the oral and documentary evidence, by the judgment and decree under challenge, while dismissing the Appeal Suit, restricted the decree to item Nos.1 and 2 of plaint 'A' schedule property.

13. Aggrieved by the same, the present Second Appeal is filed by the defendants.

14. Learned counsel for the appellants/defendants would contend that plaintiff No.1 is not the daughter of late M. Rajaiah; that there is no valid marriage between late M. Rajaiah and plaintiff No.3; that plaintiff No.3 already married to a person of Parkapalle Village and during subsistence of the said marriage, she married late M. Rajaiah; that there is an agreement i.e., 'Ex.B1', under which sale proceeds were given to plaintiff No.3; that, therefore, the plaintiffs are not entitled to any share and ultimately, prayed to set aside the impugned judgment and decree of first appellate Court and also the judgment and decree, dated 31.07.2006, rendered in O.S.No.20 of 2000 by the learned Senior Civil Judge, Karimnagar.

15. On the other hand, learned counsel for the plaintiffs would contend that plaintiff Nos.1 and 2 are the children of late M. Rajaiah; that there was a valid marriage between late M. Rajaiah and plaintiff No.3; that the second marriage of late M. Rajaiah took place after the death of his first wife; that plaintiff Nos.1 and 2 and the defendant Nos.1 to 3 being the children of late M. Rajaiah are entitled for share in the suit schedule properties;

that the first appellate Court had rightly decreed the suit with some modification; that there is no substantial question of law in the Second Appeal, so also, merits and ultimately, prayed to dismiss the appeal.

16. While dealing with the subject matter of the Second Appeal, this Court was pleased to frame the following substantial questions of law on 03.07.2008:

- “1. Whether there is any perversity in the judgments of the Courts below?
2. Whether there are any grounds to interfere with the same?”

Points 1 and 2:-

17. It is contended by the learned counsel for defendants that plaintiff No.1 is not the daughter of late M. Rajaiah. No evidence is let in to substantiate the same. It is also contended that plaintiff No.3 is not the second wife of late M. Rajaiah and there was no legal marriage between them and plaintiff No.3 married to one person of Parkapalle Village. To substantiate these contentions, there is no absolute evidence on record. Ex.B1 – Agreement is the document, wherein there is mention of relationship between the respondents/plaintiffs and late M. Rajaiah. It is not a deed of relinquishment of right by any of the respondents/plaintiffs. It is a settlement made to meet the marriage expenses of plaintiff No.2. There is overwhelming evidence on record to substantiate that plaintiff Nos.1 and 2 are

the daughters of late M. Rajaiah and plaintiff No.3 is his second wife. There is also evidence on record to substantiate that item Nos.1 and 2 of plaint 'A' schedule property belong to late M. Rajaiah. There is no evidence to hold that plaintiff Nos.1 and 2 are the illegitimate children of late M. Rajaiah. There is evidence to substantiate that they are the children of late M. Rajaiah. There is also evidence of DW.1 that during the life time of his father, he sold item Nos.3 to 6 of plaint 'A' schedule property to meet the marriage expenses of plaintiff No.2. The evidence of DW.1 as well as the contents in Ex.B1 demonstrates the same. The contents in Ex.B1 also establish the relationship between the respondents/plaintiffs and the appellants/defendants. Therefore, the contentions/defence taken with regard to the relationship between the parties by the appellants/defendants is unsustainable. There is no dispute with regard to late M. Rajaiah leaving item Nos.1 and 2 of plaint 'A' schedule property. Therefore, all the parties are entitled to share the same, as determined by the first appellate Court. The first substantial question of law is whether there is any perversity in the judgments of the Courts below. The *lis* relates to partition of immovable properties left by late M. Rajaiah. Both the Courts below have determined the same in terms of the law of succession relating to parties. There is no perversity in the judgments of the Courts below. As the relationship between the parties and their entitlement is rightly determined by the first

appellate Court, there are no merits/grounds to interfere with the impugned judgment and decree.

18. Moreover, the questions sought to be raised in this appeal as substantial questions of law are pure questions of fact, which cannot be dealt with in this appeal filed under Section 100 of C.P.C. Where the first appellate court, being the last Court of facts, is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error, either of law or of procedure, requiring interference in a Second Appeal. The findings of the first appellate Court are not perverse. There is nothing to take a different view. The first appellate Court has neither overlooked the admissible evidence nor acted upon inadmissible evidence. After careful examination of the pleadings, evidence and the contentions, this Court finds that no question of law, much less substantial question of law, is involved in this Second Appeal. The appeal is devoid of merit and is liable to be dismissed.

19. Accordingly, the Second Appeal is dismissed confirming the judgment and decree, dated 31.12.2007, rendered in A.S.No.89 of 2006 by the I Additional District Judge, Karimnagar.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed. There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

April 18, 2019.  
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