

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal Nos.1089 and 1390 of 2004

COMMON JUDGMENT:

These two appeals arise out of a common judgment dated 21.03.2003 of the learned I Additional District Judge, Rajahmundry passed in AS.Nos.66 of 1992 and 72 of 1992 preferred respectively by the unsuccessful plaintiff and the unsuccessful defendant. While dismissing the said two first appeals, the learned Additional District Judge had confirmed the decree and judgment of the trial Court in OS.No.56 of 1987 filed by the sole plaintiff against the sole defendant.

2. To begin with, it is necessary to mention the facts that lead to the filing of these two second appeals.

The sole plaintiff had brought the suit for (a) recovery of possession of plaint 'A' schedule land after ejecting the defendant and his men there from; (b) declaration of her right, title and interest over plaint 'B' schedule house property and for recovery of possession of the same; (c) recovery of money in a sum of Rs.9,116/- together with interest at 12% per annum on Rs.8,600/- from the date of the suit till the date of payment or realisation; (d) grant of future profits over the plaint schedule property and (e) costs. The sole defendant had resisted the suit. On merits and after full fledged trial, the trial Court had decreed the suit partly. The operative portion of the judgment of the trial Court reads as follows: -

'In the result, the suit is decreed with proportionate costs declaring the title of the plaintiff over the plaint A schedule land and B schedule house property and further decreeing and directing the defendant to deliver plaint B schedule house property within one month from the date of decree. Future damages over plaint B schedule house property will be determined on a separate application to be filed by the plaintiff. The rest of the suit claim is dismissed without costs.'

Therefore, the plaintiff feeling aggrieved insofar as the dismissal of the suit for recovery of plaint 'A' schedule property and recovery of money had preferred the first appeal in AS.No.66 of 1992; and feeling aggrieved of the decree granted against him as stated above, the defendant had preferred the other appeal in AS.No.72 of 1992. Since both the appeals were dismissed, both the parties had preferred these two second appeals.

3. Be it noted that during the pendency of the first appeals, the sole appellant had died. The legal representative of the deceased sole appellant/plaintiff in AS.No.66 of 1992 is the appellant in SA.No.1390 of 2004. The appellant/defendant in AS.No.72 of 1992 is the appellant in SA.No.1089 of 2004.

4. I have heard the submissions of the learned counsel for the plaintiff and the learned counsel for the defendant. I have perused the material record.

5. At the time of admission of SA.No.1390 of 2004, this court had taken note of the substantial questions of law formulated and mentioned in the memorandum of grounds of appeal of plaintiffs' appeal. The said substantial questions read as follows:

1. **Whether the Courts below are right in dismissing the suit on the ground of jurisdiction for a relief of possession of the plaint schedule property and for rents payable by the defendant, when a comprehensive suit is filed for declaration and possession of the schedule property?**
2. **Whether the courts below are right in dismissing the suit without considering that for a comprehensive relief of declaration and possession of the properties a suit is maintainable specifically when the defendant is pleading family arrangement for the schedule property?**
3. **Whether the Courts below are right in dismissing the suit holding that the plaintiff need not file the suit for declaration as such the relief of possession cannot be granted and the observation directing the plaintiff to approach the Tenancy Tribunal for such relief?**

[Reproduced verbatim]

6. At the time of admission of SA.No.1089 of 2004 of the defendant, this Court had formulated the following substantial questions of law.

1. **Whether the Courts below are right in disregarding the right accrued to the appellant under Hindu Succession Act, being the sole heir for the family of the R1, who did not possess any**

issues, vide the decision of this Court in 1962(1) AWR 238?

2. Whether the co-owner can seek recovery of possession of her undivided share in the joint family properties without filing a suit for partition?

(Reproduced verbatim)

7. To adjudicate the *lis* and answer the substantial questions of law, it is necessary to refer to the pleadings of the parties.

7.1 The case of the sole plaintiff, in brief, is this: -

One Sabbella Tata Reddy is the husband of the plaintiff. Sabbella Dorayya, who is the father of the defendant and one Satyam are divided brothers of the plaintiff's husband; and, all the three of them are sons of Sabbella Satheyya. They are all residents of Balabhadrapuram. The plaintiff and her husband had no children. Prior to 1940, the three brothers had partitioned their landed properties as well as house properties. Prior to the partition of the properties, the joint family had three items of land in Balabhadrapuram village viz., (1) an extent of Ac.1.78 cents in R.S.No.567/2; (2) an extent of Ac.1.44 cents in R.S.No.564/4 and (3) an extent of Ac.1.44 cents in R.S.No.565/1; the total extent of the three items is Ac.4.66 cents. In the partition that took place prior to 1940, the husband of the plaintiff had got an extent of Ac.0.59-1/3 cents covered by R.S.No.567/2 and Ac.0.96 cents in the total extent of Ac.2.88 cents covered by R.S.Nos.564/4 and 565/1. Subsequently, in or about the year 1942, for more convenient enjoyment, the three brothers had cancelled their original partition and had repartitioned the entire extent of Ac.4.66 cents of land. But, they had retained intact their respective shares in the house property as per the earlier partition. In the repartition, the husband of the plaintiff had got Ac.1.52 cents in R.S.No.567/2 while his two brothers had partitioned the remaining extent of Ac.0.26 cents in RS.No.567/2 and Ac.2.88 cents in RS.Nos.564/4 and 565/1. The land that fell to the share of the husband of the plaintiff is described as item no.1 of the plaint 'A' schedule. Item no.2 was purchased by the husband of the plaintiff under registered sale deed dated 28.04.1940 while items 3 and 4 are gifted to the husband of the plaintiff under registered gift deed dated 25.01.1941 by

one Kovvuri Tatareddy. Thus, by 1943, the plaintiff's husband was enjoying the entire plaint 'A' schedule by personally cultivating the same. He was also in possession and enjoyment of the house property described in the plaint 'B' schedule as his separate and absolute property. As such, after the death of the husband of the plaintiff, the plaintiff had taken possession of all his properties and enjoyed them till her estate in the properties was enlarged as per the provisions of the Hindu Succession Act. While so, due to her advanced age, the plaintiff had intended to shift her residence from Balabadrapuram to Pandalapaka. Therefore, she had leased out the plaint 'A' schedule lands to the father of the defendant on the condition that he should pay her yearly rent regularly. Keeping the granary for her use, the plaintiff had orally permitted the father of the defendant to use the remaining portion in the plaint 'B' schedule house property. Likewise, the plaintiff had also leased out her land for some time to Satyam, another brother of the plaintiff's husband. Subsequently, for the last 10 to 12 years, the defendant has been cultivating the plaint 'A' schedule land as the tenant of the plaintiff on an annual rent of 30 kata bags of paddy. The defendant did not pay any makta for the years 1985-86 and 1986-87 and inspite of the oral demands, the defendant has been postponing payment of the same. The plaintiff had some land in Pandalapaka. During 1985-86, she had received paddy out of which about 26 kata bags of paddy was transported to Balabadrapuram to be kept in her granary. Some time in July 1986 or so, the defendant had sold the said paddy of 26 kata bags and had realized the amount, but did not pay the same to the plaintiff. The plaintiff came to know of it later. As the defendant had also failed to deliver the makta due by 15.01.1987, the plaintiff had got issued a registered notice dated 18.01.1987 to the defendant. The defendant having received the said notice failed to comply with the demand of the plaintiff but had got issued belatedly, a cantankerous reply notice. In the reply dated 23.03.1987, the defendant had denied the rights of the plaintiff with regard to the plaint 'A' & 'B' schedule properties and had raised untenable, false and frivolous contentions. Still the defendant is in possession of the plaint 'A' & 'B' schedule properties. From the beginning the defendant has been in possession of the plaint 'A' schedule land as a

cultivating tenant and the plaint 'B' schedule house property on permission from the plaintiff. As such, the defendant is having permissive possession only of the said house property. But the defendant denies the rights of the plaintiff in all the properties. The defendant had lodged a caveat petition before the Court (trial Court) as well as Principal District Munsif Court. In the said caveat petitions, the defendant had unhesitatingly admitted the proprietary rights of the plaintiff in the plaint 'A' schedule landed property and described him as the cultivating tenant. The defendant has to pay 86 kata bags of paddy or its value to the plaintiff by 18.01.1987, the date of the notice. The defendant cannot be allowed to continue in possession of the plaint 'A' schedule land or 'B' schedule house property. The defendant is liable to be evicted from the plaint 'A' and 'B' schedule properties and to pay the value of 86 kata bags of paddy together with interest at 12% per annum. The defendant is liable to pay future damages till the delivery of the plaint 'A' and 'B' schedule properties to the plaintiff. The plaintiff is entitled to the reliefs as prayed for in the suit.

7.2 The defence of the defendant is this: -

The civil Court has no jurisdiction to settle the dispute between landlord and tenant. After the death of the husband of the plaintiff, the father of the defendant and his other brothers made an arrangement with the plaintiff and agreed *inter alia* that the father of this defendant has to pay 12 bags of paddy annually to the plaintiff; but, there was no partition between the plaintiff's husband and his other brothers as alleged in the plaint. Therefore, the partition that was alleged to have taken place in or about 1942 is a false story set up by the plaintiff. In the reply notice, this defendant had stated the correct facts. After the death of her husband, the plaintiff had left Balabhadrapuram village and had started residing at Pandalapaka from the year 1943. She was only receiving rentals at the rate of 12 kata bags during the life time of the father of the defendant and consequently the said arrangement had

continued; and, ultimately during the last eight years, due to the relationship, the plaintiff had received 20 kata bags of paddy annually. The defendant had paid the above maktha for the year 1985-86 and to that effect the plaintiff had passed receipts. The plaintiff was never in possession and enjoyment of the plaint schedule properties. Due to the arrangement made between the plaintiff's husband and his other brother, the property in the 'B' schedule was given to the father of the defendant and he had enjoyed the same during his life time as an absolute owner and after his death the defendant has been enjoying the same as absolute owner. The plaintiff had never kept any paddy bags in the house property and the same were never sold away by the defendant as alleged by her. *The plaintiff is mischievously interpreting the intention of this defendant in the reply notice stating categorically that she was given maintenance from the plaint 'A' schedule property after the death of her husband but, never at any time this defendant had denied her right and title over the plaint 'A' schedule property which was changed by the operation of law and by the provisions of the Hindu Succession Act.* (the averments in italics is reproduced verbatim). The defendant had only stated in the reply notice that the plaintiff is entitled only to the rentals of 20 kata bags of paddy annually; but, at no time this defendant had denied her title over the plaint schedule property. The plaint 'B' schedule property originally belonged to Sabbella Satheyya and after the death of the said Satheyya, due to the arrangement made between the plaintiff's husband and his brothers the said property in 'B' schedule was given to this defendant's father. This defendant's father had enjoyed the property during his life time as an absolute owner without any let or hindrance. After the death of his father, S.Doryya, this defendant is enjoying the property as absolute owner. The plaintiff at any time never enjoyed the plaint 'B' schedule property. There is no cause of action. The suit may be dismissed.

7.3 Taking into consideration the above pleadings, the trial Court had framed the following issues.

- 1. Whether the plaintiff is entitled to file the suit and claim the relief as prayed for?**

- 2. Whether the plaintiff is entitled to claim the maktha as prayed for?**
- 3. Whether this court has got jurisdiction to try the suit?**
- 4. Whether the suit is bad for non-joinder of necessary party with regard to the plaint 'B' schedule as contended in the statement?**
- 5. Whether the defendant is cultivating tenant of the plaint 'B' schedule property?**
- 6. Whether the arrangement between the defendant's father and his other brother's binding on the plaintiff? And**
- 7. To what relief?**

7.4 At trial, the sole plaintiff (since died) and her supporting witness were examined as PWs1 and 2 and exhibits A1 to A11 were marked. On the side of the defendant, the sole defendant and his supporting witnesses were examined as DWs1 to 4 and exhibits B1 to B3 were marked.

8. Dealing with the issue concerning plaintiff's right to recover possession of plaint 'A' schedule property from the defendant, which is a land of Ac.2.05 cents in four items, what is to be noted is that even according to the plaint averments, the defendant is a tenant of the said landed property in plaint 'A' schedule. Therefore, the trial Court had held that the civil Court has no jurisdiction to grant the relief to the plaintiff for recovery of plaint 'A' schedule property. Dealing with the plaint 'B' schedule house property, the trial Court had held that the civil Court has got jurisdiction and, therefore, granted a decree declaring that the plaintiff has got right, title and ownership over plaint 'B' schedule house property and that she is entitled to recover possession of the same from the defendant. The trial Court had, however, dismissed the suit for recovery of money and had further directed the plaintiff to file an application separately for determination of future profits. As already noted, by a common judgment, the Court below had dismissed both the appeals and confirmed the decree and judgment of the trial court in all respects.

9. Before proceeding further, it is to be restated that these two appeals

being second appeals, the decision in these second appeals shall be confined to the substantial questions formulated in these appeals in view of the narrow compass of Section 100 of the Code.

10. Insofar as plaint 'A' schedule property is concerned, it is a landed property and in regard to the relief of recovery of possession of the same, the PW1 [the plaintiff (since died)] had deposed in line with her pleaded case. DW1 had deposed in his examination in chief that he is a cultivating tenant of the lands of the plaintiff on yearly maktha of 20 bags of paddy and that earlier his father had cultivated the said lands on lease on an yearly maktha of 12 bags of paddy. In this regard, it is necessary to refer to the testimony of DW1, which is as follows: - 'The plaintiff is my aunt. I am cultivating tenant for the lands of the plaintiff on an yearly maktha of 20 bags of paddy at present. Previously my father used to cultivate these lands on lease on an yearly maktha of 12 bags of paddy. He cultivated the land during his life time as such. After the death of my father, I am cultivating the plaint schedule land on lease. The yearly maktha was increased to 20 bags of paddy about 6 years prior to the filing of the suit. The plaintiff after the death of her husband left for Pandalapaka 40 years ago. I am delivering the agreed rate of maktha at Pandalapaka. Exhibit B1 is the receipt passed by the plaintiff for the maktha paid by me for the year 1985. I paid the maktha to the plaintiff in the presence of Karri Gopalakrishnareddi, Kovvuri Veerreddi, Satti Surayanarayanareddi. I am not in arrears of maktha. Subsequent to the filing of the suit, I am depositing the maktha into Court.' Having regard to these admitted and established facts, both the Courts had concurrently held that the sole plaintiff is the landlady and that the defendant is the cultivating tenant of the plaint 'A' schedule land and, therefore, the civil Court has no jurisdiction to order eviction of the defendant/tenant from the plaint 'A' schedule land and direct him to handover possession of plaint 'A' schedule land to the plaintiff.

11. The learned counsel for the plaintiff had strongly contended that when the defendant had denied the title and when the suit is a comprehensive suit, the civil court has got jurisdiction and competency to grant the relief of eviction and therefore, the Courts below ought to have granted the relief of

recovery of possession of plaint 'A' schedule landed property though the defendant is admittedly a tenant of the plaint 'A' schedule landed property. On the other hand, the learned counsel for the defendant had rightly pointed out that the plaintiff had not sought the relief of declaration of title insofar as this 'A' schedule landed property and that in the suit the relief of recovery of possession of the plaint 'A' schedule landed property is only sought. It is not in dispute that insofar as the plaint 'A' schedule property is concerned, no relief of declaration of title is sought and only the relief of recovery of possession is sought. Therefore, it cannot be said that the suit is a comprehensive suit insofar as the plaint 'A' schedule landed property is concerned. Therefore, this Court finds that the courts below are justified in holding that the Tenancy Tribunal has alone got jurisdiction and that the courts below (civil courts) have no jurisdiction to order eviction of the tenant (the defendant) from the plaint 'A' schedule landed property.

12. Be that as it may. As could be seen from the substantial questions of law raised by the defendant, it appears that the case of the defendant is that he is entitled to succeed to a share in the property of the sole plaintiff being the son of one of the brothers of the husband of the sole plaintiff. The said substantial question may be referred to for convenience as follows: 'Whether the Courts below are right in disregarding the right accrued to the appellant under Hindu Succession Act, being the sole heir for the family of the 1st respondent, who did not possess any issues vide the decision of this Court reported in 1962(1) An.WR at page 238?' The defendant is claiming to be a sharer and co owner of the plaint 'A' schedule land on the death of the sole plaintiff/his paternal aunt. He is in fact claiming a share in the present properties. The relationship is not in dispute. The defendant is the son of the brother of the husband of the deceased sole plaintiff. The said sole plaintiff and her husband had no issues. However, her legal representatives were already brought on record. Now the question is whether the defendant can claim a share in the property of the deceased sole plaintiff by way of succession in this suit at the stage of second appeal.

13. Before proceeding further, it is necessary to first refer to the relevant provisions of the Hindu Succession Act which deal with rules of succession in case of female and males.

Section 15:

15. General rules of succession in the case of female Hindus:

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16:

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1)-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

Section 8:

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
(d) lastly, if there is no agnate, then upon the cognates of the deceased.

So as per the rule of succession in case of a female Hindu, notwithstanding anything contained in sub-section (1) of Section 15, her property devolves upon either the heirs of the father or the heirs of the husband depending upon the question as to whether the property is inherited from her father or mother on one hand and her husband or her father-in-law on the other. Hence, the property which was inherited by a female Hindu from her husband, in the absence of any son or daughter (including the children of any pre-deceased son or daughter) devolves upon the heirs of the husband. Schedule I of the Act deals with class I heirs of a male Hindu. If there is no heir of class I, then the property of a male Hindu dying intestate devolves upon the heirs being the relatives specified in class II of the Schedule. According to class II, if a male Hindu dies intestate the property devolves firstly upon father; in the absence of the father, upon (1) son's daughter's son (2) son's daughter's daughter (3) brother (4) sister in that order. Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession. It is not in dispute that the husband of the plaintiff is having brothers. Therefore, the property does not devolve upon the son of a brother, but devolves upon the brothers of the husband of the female in case the property is inherited from her husband and in the absence of any son or daughter (including the children of any pre-deceased son or daughter). In the light of the legal position, the defendant being the son of a brother is therefore, *ex facie* not entitled to claim a share in the property of the deceased sole plaintiff is the contention of the learned counsel for the appellant in SA.No.1390 of 2004, who is brought on record as legal representative of the deceased sole plaintiff. In the presence of the heirs in

second entry of class II, the defendant who is the son of the brother of the husband of the plaintiff being a heir in entry four does not get any share either in the plaint 'A' or 'B' schedule property as per the contentions of the appellant in SA.No.1390 of 2004, who was brought on record on the death of the deceased sole plaintiff. Be that as it may. The defendant did not seek amendment of his pleadings and make a specific claim or counter claim for partition of the properties of the deceased sole plaintiff and allotment of a share to him. No requisite court fee is also paid by valuing the relief of partition. And, hence, no issue was raised and formulated for determination. Further, the deceased sole plaintiff is having some other properties is not in dispute. There are also other claimants and rival claimants is also not in dispute; and the said other claimants are not parties to the present *lis*. Therefore and for all the reasons the defendant cannot claim a share by seeking partition in this *lis*, more particularly as no amendment of the pleadings was sought and the other claimants/rival claimants are not parties to this *lis* and as the deceased sole plaintiff is having some other properties other than the properties involved in this *lis* and it is also not borne out by record as to from which source the deceased sole plaintiff had inherited her other properties, which are not subject matter of the suit. As per the Law, which is well settled, an issue not arising from the pleadings cannot be framed and there cannot be any decision on an issue not framed. The legal representatives of the deceased sole plaintiff cannot be taken surprise by converting their suit into one for partition to the handiness of the defendant. Therefore, in the facts and circumstances of this case, it is impermissible to treat this suit of the sole plaintiff as a suit for partition of the properties of the deceased sole plaintiff. Therefore, this court need not go into the contentions and rival contentions on this aspect of the matter. Having regard to the reasons, this court finds that there is no need to further dilate on this substantial question of law, which is not involved in these second appeals.

14. In view of the compass of the substantial questions raised and in the absence of any question raised in regard to the reliefs granted declaring the title of the plaintiff and her right to recover possession of the plaint 'B'

schedule house property, this Court need not go into the aspect of the title of 'B' schedule house property and the right to recover possession of the same for the reason that the Courts below had concurrently held that the deceased sole plaintiff is having title and ownership over plaint 'B' schedule property and is entitled to recover possession of the same. When once the title of plaintiff is established and the defendant could not establish his right to continue to remain in possession of the 'B' schedule house property, it follows that the decree of the trial court in that regard as confirmed by the court of first appeal deserve to be sustained. Further, in regard to dismissal of the sole plaintiff's claim for recovery of money towards value of paddy, what is to be noted is that both the Courts below had recorded concurrent findings of fact supported by reasons, which are cogent and valid and therefore, the said findings also do not call for any interference in these second appeals.

15. In the result, both the second appeals are dismissed confirming the decrees and the common judgment of the court below. There shall be no order as to costs. The defendant is granted two months time from the date of the receipt of a copy of this judgment to vacate and deliver the plaint 'B' schedule house property to the appellant in SA.No.1390 of 2004, i.e., the legal representative of the deceased sole plaintiff. On the failure of the defendant to do so, the said appellant is at liberty to recover possession of the said property by following the procedure established by law.

Miscellaneous petitions, if any, pending in these appeals shall stand closed.

M. SEETHARAMA MURTI, J

10th September, 2015
Vjl