

THE HON'BLE SRI JUSTICE Dr B. SIVA SANKARA RAO

C.C.C.A.No.282 of 2007

ORDER:

The unsuccessful plaintiff-daughter in the partition suit in O.S.No.2811 of 2004 on the file of I Additional Senior civil Judge, City Civil Court, Hyderabad is the appellant herein. The suit filed was against 3 defendants who are respondents No.1 to 3 of the appeal. Pending appeal, 1st respondent/1st defendant (no other than the father of the plaintiff) died and other Legal Representatives are also brought on record as R-4 to R-6 vide an order dated 17.09.2007 in CMP No.726 of 2007.

2. The claim for partition of the paint schedule properties is into 8 equal shares and to allot such 1/8th share to her with separate possession and meantime to grant injunction consequently restraining respondents/ defendants from alienating the suit schedule property including entering into any agreement with third defendant or others by calming joint possession by payment of fixed court fees. Among the 3 defendants, so far as 3rd defendant referred supra not a relative nor a shareholder but for proposing to enter into agreement for sale, 1st and 2nd defendants are father of the plaintiff and paternal junior uncle of the plaintiff and sons of one late Bal Singh claimed as a original owner of the property in seeking relief of partition. In the trial Court the defendants remained ex parte without appearance and contest and plaintiff herself cause examined as PW.1 and placed reliance upon Exs.A1 to A7 viz., the registered legal notices dated 14.11.2003, 15.03.2004 with acknowledgements of service and market value certificate and encumbrance certificate and the property assessment extract respectively. After said evidence, the trial Court dismissed the suit holding that there is no evidence from the plaintiff to the satisfaction of the Court for entitlement to share in the properties vide

judgment dated 09.06.2005. It is impugning the same, present appeal maintained by the unsuccessful plaintiff supra and is pending against the respondents as referred supra from death of her father D1 pending appeal.

3. The respondents even served with notices in the appeal and also in the L.R application from death of 1st respondent/1st defendant brining on record respondents No.4 to 6, supported by proof filed, failed to attend to contest.

4. Heard learned counsel for the appellant and taken as heard respondents supra since served in the appeal with no appearance and perused the material on record.

5. Now the points that would arise for consideration are :

- 1) Whether plaintiff/appellant is entitled to share in the plaint schedule property either as co-owner or as co-sharer including from death of 1st respondent/1st defendant in his interest through a share?
- 2) If so, trial Court dismissal judgment and decree is unsustainable and requires interference by this Court while sitting in appeal?
- 3) To what result?

6. Points No.1 and 2 since inter related taken up together to decide in answering for Point No.3.

POINT Nos.1 and 2 :

7. As per plaintiff, suit claimed for partition of the plaint schedule property consisting of house bearing No.5-1-300 along with appurtenant site admeasuring 325 sq yds at Old Sikh lane, Goliguda, Hyderabad municipal limits. Within the boundaries described on 4 sites in the plaint schedule for the relief of partition with consequential injunction; the plaint schedule property was acquired by father of

defendants No.1 and 2 by name Sardar Balsingh and it was not partitioned between defendants No.1 and 2 during life time of father of defendants No.1 and 2 or later being his sons, that first defendant got besides plaintiff as daughter two more sons (respondents No.5 and 6) by name Sardar Surender Singh and Surjit singh and fourth respondent is wife of 1st respondent/ 1st defendant, and that in the plaint schedule property the 1st defendant got half share and the remaining undivided half is entitled by second defendant, and that as per Section 29-A of the A.P. Hindu Succession Amended Act, the plaintiff being the daughter of 1st defendant as if a son by birth a co-parcenor in her own right in that co-parcenery interest to claim share and thereby entitled to $\frac{1}{4}$ share out of 1st defendant's half share in the plaint schedule property along with each $\frac{1}{4}$ two sons and D1 in that entitle, that even at the time of marriage of plaintiff except household articles nothing given as pasupukumkuma in the form of gold, cash or silver, that while defendants 1 and 2 are trying to alienate the property, plaintiff demanded for her share therein being coparcenor, from which, for no proper response by postponing she cause issued legal notices dated 14.11.2003 and 15.3.2004 directing defendant No.3 not to choose to purchase and defendants No.1 and 2 not to alienate and any such alienation if at all no way to bind her undivided interest and for said notices, there is no reply and plaintiff again cause issued another notice dated 15.3.2004 demanding first defendant for partition and first defendant having acknowledged failed to reply for that also which made her to file the suit. The first legal notice issued to third defendant. She mentioned that it appears making negotiations to purchase plaint schedule property from defendants Nos.1 and 2 without knowledge of her and her brothers who got rights over the property, hence desist from purchase and otherwise being constrained to file suit for partition ignoring any alienation and the second notice supra issued to defendant No.1 is specifically by demanding for

partition in claiming as co-parcenor for 1/8th share. The said notices are marked as Ex.sA1 and A2 and acknowledgments are Ex.A.3. The assessment Registrar of the property covered by Ex.A6 shows the property is registered in the name of Bal Singh, the grand father of plaintiff/appellant and respondents No.5 and 6 being daughter and sons of R1 since died and husband of R4. In proof of plaintiff's claim, issued by the municipal corporation of the property assessment and assessment extract is of the period commencing from 1983 to 1999 and the house number mentioned is as shown in the plaint schedule of 5-1-300. Ex.A5 is the encumbrance certificate filed which is dated 22.6.2004 as per which there is no any alienation of the property as on the date the suit filed and even subsequently as on the date of which the EC obtained till 24.11.2008. It is to say there is even no cloud of any alienation in favour of third defendant by defendants No.1 and 2 as it could have been reflected. Ex.A4 is the market value certificate issued by the Sub Registrar concerned for the property shown as Madras Terraced and shabad stone building and by June 2004 mentioned the value as Rs.12,000/- and the extent described as 325 sq yds and same as reflected in plaint schedule within which the house building bearing D No.5-1-300 is situate. All the Ex.A4 to A6 clearly speak the plaint schedule property belongs to the father of defendants No.1 and 2 no other than the paternal grand father of plaintiff/appellant and respondents No.5 and 6. As referred supra defendants/respondents even served, failed to attend, the defendants No.1 to 3 even failed to give reply to the legal notices served for the proposal of alienation by D1 and D2 to D3 and for demand of plaintiff for partition of the property. It is important to note that the plaintiff's claim is as coparcenor in the suit. The suit filed was in the year 2004 and the plaint shows filing of the suit was in the end of June 2004.

8. The Hindu Succession Act 30/1956 came in force w.e.f. 17.6.1956 by giving overriding effect over the uncoded law of Hindu

Survivorship and succession, later the same is amended by A.P. Amended Act 17/1986 which came into force w.e.f. 5.9.1985, by incorporating Section 29(a) to (c) additionally without deleting or altering of any of the existing Sections 1 to 31 of the Hindu Succession Act, 1956 and the schedule containing Class 1 and 2 (description of the heirs). However, subsequently the Hindu Succession Amendment Act 39/05 which came into force i.e., Central Legislation came into force by amending some of the existing sections w.e.f. 09.09.2005 and in particular Section 6 by deleting the existing one and substituting new section and also by incorporating some other relatives of the deceased in Class-I legal heirs additionally. Pursuant to Section 8 of the Act, which deals with General rules of succession in the case of males. Section 8 of the Hindu Succession Act reads as follows:

Section 8 : General rules of succession in the case of males.—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.

9. The heirs in clause-I is specified in the schedule part-I and heirs in Class-II specified in the schedule Part-II. Sons, daughters and wife/widow are the class legal heirs as per schedule part-I of the Act with reference to Sections 9 & 10.

Section 9 of the Act speaks order of succession among heirs in the schedule. In its aim, those in Class-I shall take simultaneously and

to the exclusion of all other hers.

Section 10 of the Act says distribution of property among heirs of class-I of the schedule of an intestate viz intestates widow, surviving sons, daughter and mother each can take share, thus as per the plaintiff, the property originally belonged to her paternal grand father i.e., father of defendants No.1 and 2 named by her as Sardar Balsingh. It is not her case that Balsingh got the property from his father much less for Balsingh it is ancestral property. She claims as co-parcener by birth with right as if a son. Section 29(a) to (c) of the Hindu Succession Act, A.P. Amended Act supra entitles according to her for there is no actual partition provided she shows that she was not married by the time the act came into force on 05.09.1985. She did not speak when her marriage with Ranjit Singh was performed either in the legal notices or in the plaint or in her evidence in chief. What she stated at the cost of repetition is, the property is of her paternal grand father. Once such is the case, her father and father's brother, defendants No.1 and 2 after death of her paternal grand father, could succeed the property as Class-I legal heirs being two sons of Balsingh under Sections 8 to 10 r/w Schedule 1 of the Hindu Succession Act 1956, if Balsingh shown died after Hindu Succession Act 1956 came into force. There is no material in this regard, as to when Balsingh died. If he died prior to the Act, 1956, defendants 1 & 2 could get as co-parceners, subject to life estate rights under 1937 Act by mother of defendants 1 & 2 to the 1/3rd interest of father of defendants 1 and 2. There is no material as to when mother of defendants 1 & 2 died. When such material not before the Court, the Court has to proceed from the property claimed that of father of defendants 1 & 2 as succeeded by defendants after death of their father as the Class-I legal heirs under Section 8 of the Act, 1956 when such is the case neither plaintiff nor her two brothers being issues of 1st defendant be co-parceners either under A.P. Amended Act, 1986 or under Central

amended Act, 2005 but for class-I legal heirs of 1st defendant along with their mother (wife of D1) and as such as a subsequent event pending the appeal suit, which is continuation of original suit, to mould the relief, instead of driving to file fresh suit and from which after death of 1st defendant out of his half share the appellant and respondents No.4 to 6 being the four legal heirs under Class-I of the Schedule r/w Section 8 of the H.S.Act entitled to 1/8th each in the plaint schedule property as remaining 1/2(4/8th) the 2nd defendant is entitled and to that extent the appeal is to be allowed by setting aside the trial Court's dismissal judgment and decree dated 09.06.2005.

10. Having regard to the above, plaintiff is entitled to the said relief or partition and separate possession of her of 1/8th share in the plaint schedule property.

11. Accordingly and in the result, this C.C.C.A. is allowed by setting aside the trial Court judgment and decree in O.S.No.2811 of 2004 on the file of I Additional Senior Civil Judge, City Civil Court, Hyderabad dated 09.06.2005 and by passing preliminary decree in favour of plaintiff for partition and separate possession of her 1/8th share in the plaint schedule property with consequential injunction against alienation of the same in any manner. There shall be no order as to costs.

Miscellaneous petitions, if any pending in this appeal, shall stand closed.

JUSTICE Dr B. SIVA SANKARA RAO.

Date : 22 -12-2015

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