

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

S.A.No.623 of 2014

Judgment:

The plaintiff's suit for partition of plaint schedule properties into two equal shares and for allotment of one such share was dismissed successively by trial Court and first appellate Court. Hence the 2nd appeal.

2) The facts shorn of unnecessary details are as follows:

a) The plaintiff filed the suit against four defendants. First defendant is the son; second defendant is the wife and 3rd defendant is daughter-in-law of Pulamarasetti Appa Rao and whereas fourth defendant is the father of plaintiff. Plaintiff is the grand son of Appa Rao's sister by name Sarasa Appala Narsamma. Plaintiff's case was that late Pulamarasetti Appa Rao was the absolute owner of the plaint schedule properties as he inherited them from his later father—Pulamarasetti Somulu being his own son. During his life time the said Appa Rao executed Ex.A3—Will deed dated 19.07.1989 in a sound and disposing state of mind in favour of plaintiff and bequeathed his undivided half share in items 1 and 2 of plaint schedule properties. He gifted the remaining half share in items 1 and 2 of plaint schedule properties in favour of mother of defendant No.4 i.e. grand mother of plaintiff.

Defendant No.4 used to look after the welfare of Pulamarasetti Appa Rao, since defendants 1 and 2 i.e. son and wife of Appa Rao deserted him. The further case of plaintiff is that defendants 1 and 2 filed a suit for partition and recovery of vacant possession of plaint schedule properties and other properties in O.S.No.297 of 1985 on the file of District Munsif, Narsipatnam against Appa Rao

and his sister Sarasa Appala Narasamma. During pendency of suit Appa Rao died testate in October, 1989 at Narsipatnam. The grand mother of plaintiff also died pending suit. During his life time Appa Rao was tenant in the house of one Ch.Venkat Ramana @ Babji. After his death, Venkata Ramana's son found one iron box belonging to said Pulamarasetti Appa Rao and gave to father of plaintiff in September, 1995. On 28.10.1995 the plaintiff searched the box belonging to Appa Rao and found Ex.A3—Will executed by Appa Rao. Thereupon, on 31.10.1995 the plaintiff filed petition in suit O.S.No.297 of 1985 to implead him as defendant No.5 but the said petition was rejected on 15.02.1996. Aggrieved, the plaintiff filed CRP No.2064 of 1996 before High Court of Andhra Pradesh. It was disposed of with a direction to the plaintiff to file a separate suit. While so, O.S.No.297 of 1985 was decreed on 13.02.1996 against defendant No.4. So, defendant No.4 filed A.S.No.38 of 1996 before Subordinate Judge, Chodavaram. Thus, the plaintiff filed separate suit in O.S.No.245 of 1996 and claimed half share in the plaint schedule property by virtue of Ex.A3—Will.

b) The contention of defendants 1 to 3 was that the plaint schedule items 1 and 2 and another mud house at Kothaveedhi in Narsipatnam which is not included in the suit originally belonged to late Pulamarasetti Ramamma i.e. mother of late Somulu and she died intestate on 11.09.1918 and so, the properties devolved on her sons i.e. Somulu and his brothers and Items 1 and 2 and another house in Kothaveedi at Narsipatnam fell to the share of Somulu. He died intestate on 02.03.1930 and so the property devolved on his male issue i.e. Pulamarasetti Appa Rao. So, the said property is the ancestral coparcenary property in the hands of late Appa Rao and it belonged to Appa Rao and his son i.e. first defendant.

c) The further contention of defendants 1 to 3 was that Appa Rao deserted his wife and son (Defendants 1 and 2) and sent them to live in the house at Kothaveedi. The said house was under the mortgage of one Yeramsetti Appala Narasamma. The 2nd defendant used to pay rents to her and later discharged the mortgage. Later Appa Rao stealthily executed gift deed dated 17.05.1970 in respect of house at Kothaveedi in favour of his sister—Sarasa Appala Narasamma (mother of defendant No.4) which was never accepted and later in respect of the present suit items 1 and 2 and house, he executed another gift deed dated 15.05.1983 in favour of Sarasa Appala Narasamma bequeathing his half share. As these two gift deeds dated 17.05.1970 and 16.05.1983 amount to gifts of undivided interest in the coparcenary property, they are nonest and void. The first defendant filed OS.No.297 of 1985 on the file of Principal Junior Civil Judge, Narsipatnam for partition of suit properties against his father Appa Rao, his donee sister—Sarasa Appala Narasamma (4th defendant's mother) and the 2nd defendant herein i.e. the wife of Appa Rao. Pending said suit Appa Rao died intestate on 14.08.1989. The defendants 1 and 2 being LRs, were recognized as such by a Memo dated 27.10.1989. Later Sarasa Appala Narasamma (D2 in O.S.No.297 of 1985) also died intestate on 08.10.1983 and so, the present defendant No.4 was added as her L.R. Ultimately the said suit was decreed on 06.03.1996 in favour of defendants 1 and 2 and the gifts were declared as void. The written statements filed by Appa Rao and Appala Narasamma in the said suit would disclose that the suit properties are ancestral in the hands of Appa Rao. Hence, these statements will bind the present plaintiff also. The further contention of defendants is that the Will dated 19.07.1989 allegedly executed by Appa Rao was false, forged and fabricated. The

terms of the Will were totally false and unnatural.

3) In the light of above rival contentions, the primary issue for consideration before the trial Court was with regard to the genuineness of Ex.A3—will dated 19.07.1989 said to be executed by late Appa Rao in favour of plaintiff. The trial Court in its judgment in O.S.No.245 of 1996 on a thorough discussion of facts and law concerning to Wills had come to the opinion that a number of suspicious circumstances shrouded Ex.A3—Will and the Will was brought into existence to get unlawful advantage six years after the death of late Appa Rao. Further, Appa Rao had no right over the property to execute the Will. Accordingly, the trial Court dismissed the suit.

4) Aggrieved by the judgment of the trial Court, the plaintiff filed A.S.No.1 of 2014 before the Senior Civil Judge, Chodavaram. The Appellate Court after a vivid discussion made in paras-22 to 24 of its judgment had opined that the plaintiff could not explain the suspicious circumstances raised by the defendants and ultimately recorded that Ex.A3—Will was not a genuine one and accordingly dismissed the appeal.

Hence, the present Second Appeal.

5) In para-24 of the grounds of the appeal the appellant sought to project certain substantial questions of law which according to him arise for consideration in this appeal.

6) Be that it may, the fundamental issue that arose for consideration throughout is the genuineness of Ex.A3—Will dated 19.07.1989 and both the Courts below gave a concurrent finding of fact that the plaintiff being the propounder of the Will, failed to ward off suspicious circumstances surrounding the Will and rejected his

claim over the suit schedule properties. In the considered view of this court, the finding is based purely on a question of fact but not on any question of law, much less substantial question of law. The other issues sought to be projected by the appellant so as to get the appeal admitted are of no significance.

7) Since no question of law, much less substantial question of law, is involved in this Second Appeal warranting decision of this High Court, this Second Appeal is dismissed at the admission stage.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 10.07.2015

Scs/Murthy