

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.585 of 2010
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JUDGMENT:

This is an appeal by the unsuccessful defendants 1, 2 and 4 under Section 100 of the Code of Civil Procedure, 1908 assailing the decree and judgment dated 19.10.2009 of the learned District Judge, Machilipatnam of Krishna District passed in AS.No.97 of 2007. The learned District Judge while dismissing the said appeal had confirmed the decree and judgment dated 01.05.2007 of the learned Senior Civil Judge, Gudiwada passed in OS.No.122 of 1996 filed by the plaintiff for partition of the plaint 'A' to 'D' schedule properties into four equal shares and for allotment of one such separated share to the plaintiff and for mesne profits.

2. I have heard the submissions of the learned counsel for the appellants/defendants 1, 2 and 4 ('the defendants 1, 2 and 4' for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). The 2nd respondent is stated to be not a necessary party. I have perused the material record.

3. The learned counsel for the appellants had contended that the following substantial questions of law are involved and, therefore, the appeal deserves admission and disposal on merits.

1. **Whether the judgment of the lower appellate Court is vitiated for the reason that having found no doubt, it satisfies the requirement of Sec.63 (c) of Indian Succession Act, grossly erred in dismissing the appeal?**
2. **Whether misinterpreting and misreading of relevant and material evidence by the lower appellate Court warrants interference by this Hon'ble Court?**
3. **Whether the finding of the lower appellate court is based on any evidence and its reasoning is perverse?**
4. **Whether the suit as framed is maintainable in law?**

[Reproduced verbatim]

4. On the other hand, the learned counsel for the 1st respondent/plaintiff had argued that no such substantial questions of law or any other substantial questions are involved in this appeal and that the second appeal is liable to be dismissed at the admission stage as it does not deserve admission.

5. Now, this court has to examine as to whether or not any substantial questions of law are involved in this second appeal and whether the appeal deserves admission for disposal on merits or is liable to be dismissed at the stage of admission.

6. The case of the plaintiff is as follows: - 'Rayi Rathaiah died intestate on 13.05.1996. His wife-Raghavamma @ Chittemma had died about five years prior to the institution of the suit. The plaintiff and the 3rd defendant are the children of the said Rathaiah and Chittemma. The said Rathaiah had developed contempt towards his said wife Chittemma and from then onwards she used to reside at Kompalli village. Subsequently, Rathaiah had brought Baby Sarojini-the 4th defendant and had treated her as his own wife; and, during their companionship as husband and wife, the 1st defendant-daughter and the 2nd defendant-son were born to them. The said Sarojini is not the legally wedded wife of Rathaiah and the defendants 1 and 2 are not his legitimate children. Rathaiah had left behind him the plaintiff and the 3rd defendant and also the properties more fully described in schedules 'A' to 'D' of the plaint. On the death of Rathaiah the properties had devolved upon the legitimate and illegitimate children in equal shares. Therefore, the plaintiff is entitled to a 1/4th share in the said properties. The plaintiff had got issued two notices demanding partition of the properties and allotment of a share to her. The said notices were received by the 3rd defendant. But the other defendants had evaded receiving the notices. Hence, the suit was brought for partition of the plaint schedule property into four equal shares by metes and bounds and according to good and bad qualities and allotment of one such separated share to the plaintiff.

7. The 2nd defendant filed a written statement and the 1st defendant had

adopted the same. In the defence, the said defendants had contended that Rathaiah did not die intestate and that he had executed a Will dated 15.03.1996 in favour of the defendants 1 and 2 and their mother i.e., 4th defendant bequeathing all his properties to them and that after Chittemma had left the company of Rathaiah a mediation had taken place and that on the advise of the elders, Rathaiah had paid an amount of Rs.1,200/- on 20.02.1969 to Chittemma towards permanent alimony i.e., maintenance for life and thus he had obtained divorce from his said wife in the presence of elders and that thereafter he had married 4th defendant-Baby Sarojini and that while leaving the company of Rathaiah, the said Chittemma had relinquished her share in the properties and that in view of the fact that the mother of the plaintiff and the 3rd defendant had relinquished her share in the properties, the plaintiff and the 3rd defendant are not entitled to a share in the properties of Rathaiah, in any view of the matter and that therefore, the suit is liable to be dismissed.

8. Having regard to the pleadings, the trial Court had framed the following issues.

- 1. Whether the Will dated 15.03.1996 is true valid?**
- 2. Whether the plaintiff is entitled for partition of the plaint schedule properties?**
- 3. Whether the plaintiff is entitled for mesne profits?**
- 4. To what relief?**

9. At trial, the plaintiff and her supporting witnesses were examined as PWs1 to 3 and exhibits A1 to A4 were marked. On the side of the defendants, DWs1 to 3 were examined and exhibits B1 to B3 were marked. Exhibits C1 to C7 were also marked. After full-fledged trial, the trial Court having held that the 4th defendant is also entitled to a share had preliminarily decreed the suit of the plaintiff and granted a decree for partition of the plaint schedule properties into five equal shares and allotment of one such separated 1/5th share each to the plaintiff and the 3rd defendant. The trial court had also held that the plaintiff and the 3rd defendant are entitled to the

relief of mesne profits and the same shall be determined in a separate application that may be filed by them. The 1st appeal preferred by the defendants 1, 2 and 4 was dismissed confirming the decree and judgment of the trial court.

10. The relationship is not in dispute. Both the Courts below had concurrently held that there is a customary divorce between Chittemma and Rathaiah and that, therefore, the 4th defendant is the legally wedded wife of Rathaiah and that therefore, she is also entitled to a share and hence, in stead of allotting 1/4th share each to the plaintiff and the 3rd defendant, had allotted a 1/5th share each and had granted a preliminary decree as already noted supra. The plaintiff and the 3rd defendant having been satisfied with the said decree granted by the trial court did not prefer any appeal and therefore, the findings that the 4th defendant is entitled to a share along with the other parties to the suit needs no interference.

11. The unsuccessful defendants, in support of their claim that they are only entitled to succeed to the properties of Rathaiah rely upon exhibit B2, which is a notarised Will dated 15.03.1996, said to have been executed by Rathaiah in a sound and disposing state of mind. According to them, as per the bequests in the said Will, the plaintiff and the 3rd defendant are not entitled to any share in the properties of Rathaiah. Dealing with the said Will, both the Courts below having regard to the oral and documentary evidence had concurrently held that the Will is not a true and genuine document. While adverting to the evidence in regard to the proof or otherwise of the Will, the courts below had also referred to the evidence of the expert, who had opined in his report that the signatures of the testator were transplanted on the alleged Will by tracing method. This Court having gone through the material record is of the well considered view that the said concurrent findings of fact, which are supported by cogent and valid reasons brook no interference more particularly, in the absence of the defence showing that there is any perversity either in the appreciation of the relevant facts or the evidence regarding the said issue concerning the truth and genuineness of the alleged

Will. Therefore, any contentions of the defendants 1, 2 and 4 based on the alleged Will, which is held to be not a true and genuine document, cannot be countenanced.

12. Coming to the defence plea that Chittemma had left the company of Rathaiah for good after receiving permanent alimony and that at that time there was a settlement of the dispute between them before the elders and that she had relinquished her share in the property of Rathaiah and that therefore, the plaintiff and 3rd defendant, who are her children, are not entitled to claim a share in the property of Rathaiah, what is to be noted is that by that time of settlement with Chittemma, Rathaiah was admittedly alive and therefore, the succession did not open; and, hence, the question of Chittemma relinquishing any share that too of her children in the property of Rathaiah did not arise. Admittedly, in regard to the properties of Rathaiah, the succession opens only on the death of Rathaiah and not before. Hence, the question of Chittemma relinquishing her right and the rights of her daughters in the properties of Rathaiah does not arise for consideration. Thus, the defence that Chittemma had relinquished her share while leaving the company of her husband for good and that therefore, her children are not entitled to a share in the property of her husband is an untenable and invalid contention on the very face of it and deserves no countenance. Therefore, the defence that the plaintiff and 3rd defendant are not entitled to a share in the properties of Rathaiah is devoid of merit and is liable to be rejected.

13. Viewed thus, this court finds that the courts below are justified in decreeing the suit and that the substantial questions, which are said to be involved in this second appeal, are not involved and that there is no substance in the substantial questions being sought to be raised in this second appeal. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. In the case on hand, as this Court finds that no substantial questions of law are involved, this second appeal is liable for dismissal at the stage of admission in view of the settled legal

position and in view of the narrow compass of Section 100 of the Code. Accordingly this Court finds that no case is made out for admitting the second appeal.

14. In the result, the second appeal is dismissed at the stage of admission. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

13th August, 2015
Vjl