

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

**SECOND APPEAL No.944 of 2000**

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**Date:17.12.2015**

**Between:**

Tiruthani Gowramma

... Appellant.

**AND**

Katari Thimmaiah (died) and  
others.

...Respondents.

**The Court made the following :**

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

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**JUDGMENT:**

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This appeal is preferred challenging judgment in A.S.No.72/1999 dated 24-08-2000 on the file of Senior Civil Judge, Punganur (originally A.S.No.68/1996 on the file of Additional District Judge, Madanapalli, which is transferred to Punganur and numbered as A.S.No.72 of 1999) whereunder Judgment in O.S.No.1300/1988 dated 15-04-1996 on the file of Junior Civil Judge, Punganur is reversed.

2. Appellant herein is plaintiff in O.S.No.1300/1988 and the respondents herein are defendants and they are hereinafter referred to as plaintiff and defendants for convenience sake.

3. Plaintiff filed the above referred suit against D1 who was the sole defendant in the suit and after his death, D2 to D8 were impleaded as legal representatives during appeal. Suit was filed for declaration of plaintiff's title over the suit schedule property and for the relief of permanent injunction restraining Katari Thimmaiah (sole defendant) his men and agents from in any way interfering with plaintiff's peaceful possession and enjoyment of the suit property. According to plaintiff, the suit property was originally belong to one Devalam Virupakshaiah of Chillapalli of Battamdoddi group, who sold the suit property to one Chinnakanti Sankaraiah on 30-11-1962 and in turn, the said Shankaraiah sold the same land to A.S. Rachaiah in the year 1973 and that the said Rachaiah is brother of plaintiff, who mortgaged the suit property to one Ramana Reddy for Rs.1,000/- on 04-03-1976. Plaintiff purchased the suit property on 25-07-1985 for valuable consideration from

A.S. Rachaiah under a registered sale deed and that she was put in possession of the same on the same day and that she has been cultivating the said land since the date of purchase, thorough her husband T. Chandrasekharaiah as she was working as a Teacher. The defendant, who has no right or title over the suit property, threatening that he would dispossess the plaintiff highhandedly from the suit land, hence the suit is filed for declaration and injunction.

4. Defendant resisted the claim of the plaintiff and according to defendants, the suit property belongs to Virupakshaiah and his three brothers namely; Rachotappa, Nanjaiah and Papaiah and the contention that Virupakshaiah has got absolute right over the suit property is incorrect. According to defendant, the plaint schedule property and several other properties were acquired by father of Virupakshaiah by name Devalam Nagappa. According to defendant, during zamindari period and during survey and settlement operation, a rough patta was issued in the name of Nagappa and

Virupakshaiah. Nagappa died in the year 1960 leaving behind him four sons and wife and after the death of Ngappa, differences arose between Virupakshaiah and his brothers and they have been living separately by enjoying their respective  $1/4^{\text{th}}$  share each and their family properties including plaint schedule property. Virupakshaiah had no right to alienate the property and the defendant purchased  $3/4^{\text{th}}$  joint share in the plaint schedule property from two brothers of Virupakshaiah and son of third brother Papaiah for a valid consideration through a registered sale deed dated 28-05-1974 and since then, he was in possession and enjoyment of the property purchased under the sale deed. Defendant has got  $3/4^{\text{th}}$  share in the entire plaint schedule property and thereby, he is a co-owner and the suit against co-owner for declaration and injunction is not maintainable and there is no cause of action for the plaintiff and that the suit is liable to be dismissed.

5. On these contentions, trial Court framed necessary issues and thereafter conducted a trial. During trial, three witnesses are examined and 22 documents are marked on plaintiff's side, whereas three witnesses are examined and 54 documents are marked on behalf of the defendant and on a overall consideration of oral and documentary evidence, trial Court decreed the suit. Aggrieved by the same, defendant preferred appeal and during pendency of the appeal, the sole defendant died and his legal representatives were brought on record.

The appellate Court, on a reappraisal of entire oral and documentary evidence, allowed the appeal holding that the plaintiff has not come to the Court with clean hands and she has no right over the suit schedule property. Aggrieved by the judgment of the appellate Court, present second appeal is preferred.

6. This Court formulated the following as substantial question of law:-

*“Whether the appellate Court is justified in dismissing the entire claim of the plaintiff when there is a finding that the plaintiff is entitled to 1/4<sup>th</sup> share in the property.”*

7. It is the contention of the Advocate for appellant that D. Virupakshaiah is pattedar for Ac.01-37 cents of agricultural land, which is plaint schedule property and he sold that property to Chinakanti Sankaraiah under Ex.A1 and subsequently the said Sankaraiah sold the suit property to brother of plaintiff under Ex.A2. It is further contended that brother of plaintiff mortgaged the very same property to Ramana Reddy under Ex.A4-document and plaintiff purchased this property from her brother on 25-07-1985 under Ex.A3 document by discharging mortgage debt due to Ramana Reddy. It is argued that trial Court, by considering these documents and oral evidence of both parties, decreed the suit, but the appellate Court, without there being any evidence to show that the property was under joint enjoyment of Virupakshaiah and his brothers, reversed findings of the trial Court only on surmises and presumptions. He submitted that even from the admitted case of defendants, Thimmaiah purchased only 3/4<sup>th</sup> share in the entire plaint schedule property and with regard to 1/4<sup>th</sup> share in the entire plaint schedule property there is no dispute and the appellate Court at least ought to have declared plaintiff's title over that 1/4<sup>th</sup> share and that the judgment of the appellate Court is not legal and valid.

8. On the other hand, Advocate for defendants submitted that when the plaintiff sought declaration of title for the entire extent of land, she has to succeed on her own pleadings and evidence and a declaration cannot be granted for part of property without there being a pleading and prayer.

He submitted that plaintiff's husband is no other than brother-in-law of Virupakshaiah and they are very well aware of the fact that it is a joint family property belonging to Virupakshaiah and his three brothers and the appellate Court has rightly reversed the findings of the trial Court considering the entire evidence available on record. He submitted that there is no evidence to show that mortgage in favour of Ramana Reddy was released in accordance with law as there is no reconveyance deed releasing the mortgage. He submitted that no equitable relief can be granted in a second appeal particularly for 1/4<sup>th</sup> share and therefore, request of the plaintiff to declare her right to the extent of 1/4<sup>th</sup> share is not tenable. It is further submitted that only if the findings of the first appellate Court are perverse then only this Court can interfere in a second appeal and the appellant has not even contended in the grounds that the findings of the first appellate Court are perverse and therefore, the appeal is not maintainable.

9. The learned Advocate for defendants relied on decisions of Hon'ble Supreme Court in **State of Madhya Pradesh vs. Maharani Ushadevi**<sup>[1]</sup>, **The City Municipal Council Bhalki vs. Gurappa and Ors**<sup>[2]</sup>, **Kalyan Singh Chouhan v. C.P. Joshi**<sup>[3]</sup>, **Union of India vs. Ibrahim Uddin and another**<sup>[4]</sup>, **Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board and others**<sup>[5]</sup> and the decision of this High Court in **Duggandla Rami Reddy (died) per L.Rs vs. Tirumala Tirupathi Devasthanams, Tirupathi, Chittoor District and another**<sup>[6]</sup>.

10. As already referred above, this Court framed the substantial question of law to the effect that whether the first appellate Court is justified in dismissing the entire claim of plaintiff without granting

declaration at least to the extent of 1/4<sup>th</sup> share.

11. As seen from the oral evidence of P.Ws.1 to 3 and oral evidence of D.Ws.1 to 3, there is no dispute with regard to relationship of plaintiff with Virupakshaiah and his family. It is established thorough Ex.B1 that Virupakshaiah and his three brothers lived jointly as joint family members. It is also clear from the evidence that family of Nagappa owned about Acs.20-00 cents of land and the suit property is part of that joint family property. It is also clear from the evidence that the vendor's vendor of plaintiff has got only 1/4<sup>th</sup> share in the plaint schedule property and he cannot convey the entire extent and at best the plaintiff's vendor's vendor can convey title to the extent of 1/4<sup>th</sup> share only. Here the plaintiff's vendor obtained sale deed for the entire extent and plaintiff also obtained sale deed for the same extent, which is in the year 1985, but long prior to that, defendant purchased 3/4<sup>th</sup> out of this plaint schedule property with specified boundaries in the year 1974.

12. Now the grievance of the plaintiff's Advocate is the appellate Court ought to have granted decree to the extent of 1/4<sup>th</sup> share.

13. In **State of Madhya Pradesh vs. Maharani Ushadevi**<sup>1</sup> Hon'ble Supreme Court pointed out that *"it is a settled law that parties are governed by their pleadings and the burden lies on the person who pleads to prove and further plaintiff has to succeed basing on strength of his case and cannot depend upon the weakness of the defendant's case."*

14. In **Duggandla Rami Reddy (died) per L.Rs vs. Tirumala Tirumala Tirupathi Devasthanams, Tirupathi, Chittoor District and another**<sup>6</sup>, a Division Bench of this Court held that *"in a suit for*

*declaration of title, the plaintiff has to positively prove his case regarding title and cannot rely upon any weakness in the defendant's title."*

15. In **The City Municipal Council Bhalki vs. Gurappa and Ors**<sup>2</sup> Hon'ble Supreme Court held that "*it is settled position of law that in a suit for declaration of title and possession, the onus is upon the plaintiff to prove his title. Further, not only is the onus of the plaintiff, he must prove his title independently, and that a decree in his favour cannot be awarded for the only reason that defendant has not been able to prove his title, as held in Brahma Nand Puri v. Neki Puri (AIR 1965 SC 1506).*

16. In **Kalyan Singh Chouhan v. C.P. Joshi**<sup>3</sup> Hon'ble Supreme Court held that "*Court cannot travel beyond the pleadings and the issue cannot be framed unless there are pleadings to raise the controversy on a particular fact or law. It is therefore, not permissible for the Court to allow the party to lead evidence which is not in the line of the pleadings. Even if the evidence is led that is just to be ignored as the same cannot be taken into consideration."*

17. Referring to the above judgments of Hon'ble Supreme Court, Advocate for defendants submitted that there is no pleadings about plaintiff's right in respect of 1/4<sup>th</sup> share, so also there is no issue framed either by trial Court or by the first appellate Court therefore, at second appellate stage, this Court cannot consider evidence that was led without any pleading and issue and grant relief to the plaintiff. I find some force in the submission of the learned counsel for the defendants when the plaintiff has not pleaded that she has right only to the extent of 1/4<sup>th</sup> share in the plaint schedule property and as there is no issue touching the shares of parties in the plaint

schedule property such aspect cannot be decided in a second appeal that too without pleading and issue.

18. In **Union of India vs. Ibrahim Uddin and another**<sup>4</sup> Hon'ble Supreme Court, while referring to earlier judgments of Supreme Court, reiterated that *"no evidence can be permitted to come on record in the absence of pleadings in that respect, no party can be permitted to travel beyond its pleadings and that all necessary material facts should be pleaded by the parity in support of the case set by it."*

19. In **Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board and others**<sup>5</sup> Hon'ble Supreme Court while dealing with the powers of the Court in a second appeal held *"Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a Court or authority with jurisdiction, is a legislature function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance with the conditions mentioned in the provision that creates it. Therefore, the Court has no power to enlarge the scope of those grounds mentioned in the statutory provision. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The Court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence."*

20. Referring to the above decision of the Hon'ble Supreme Court, learned counsel for the defendants contended that the prayer of the plaintiff cannot be considered because the Court has no power while dealing with a second appeal to consider equitable grounds.

21. As rightly pointed out by Advocate for defendants when there is no pleading and issue, considering the claim of plaintiff to the extent of 1/4<sup>th</sup> share contrary to the claim made in the plaint is not permissible.

22. Considering all these aspects and the principles laid down in the above referred decisions, I am of the view that the first appellate Court has not committed any error. On the other hand, it rightly appreciated the material evidence on record and refused the relief as claimed by the plaintiff and was right in not granting declaratory relief to the extent of 1/4<sup>th</sup> share without any pleading and issue.

23. For these reasons, I am of the view that there are no merits in the second appeal and the point is accordingly answered against the appellant.

24. In the result, appeal is dismissed but under the circumstances without costs.

25. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

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***JUSTICE S. RAVI KUMAR***

**Date:17.12.2015**

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[\[1\]](#) AIR 2015 SC 2699

[\[2\]](#) 2015 (10) SCALE 297

[\[3\]](#) AIR 2011 SUPREME COURT 1127

[\[4\]](#) (2012) 8 Supreme Court Cases 148

[\[5\]](#) (2010) 13 Supreme Court Cases 216

[\[6\]](#) 2013 (1) ALD 521