

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

-

SECOND APPEAL No.835 of 2015

-

JUDGMENT:

The 2nd defendant in the suit is the appellant in the Second Appeal. Originally the property is stated to be owned and belonging to Smt. Burhan Bee, who has since died. Suit O.S.No.1732 of 2008 has been instituted by Mohd. Abdul Rawoof and Farzana Begum. Smt. Vazir Bee was impleaded as 1st defendant while the appellant herein was shown as 2nd defendant. The learned IV Additional Senior Civil Judge (Fast Track Court), Ranga Reddy District, who tried the suit, by its judgment and preliminary decree, dated 05.07.2010, decreed the suit granting 1/3rd share in favour of the plaintiffs 2 and 3 together and 1/3rd share was granted to the 1st defendant and 1/3rd share for the 2nd defendant. The 2nd defendant then carried the matter by way of an appeal in A.S.No.123 of 2011 to XI Additional District Judge's Court, Ranga Reddy District. The said Court by its judgment, dated 15.06.2015, allowed the said appeal in-part holding that the plaintiffs together and the 1st defendant in the suit are entitled to 7/24th share respectively while the balance 10/24th share shall be allocated to the 2nd defendant/appellant. Challenging this judgment, this Second Appeal is preferred by the 2nd defendant in the suit.

2. Heard Sri G.Rajesham, learned counsel for the appellant.

3. It will be appropriate to notice the finding of fact recorded on Issue No.1 by the trial Court. The 2nd defendant in her written statement has categorically admitted that her grandfather was the owner of the suit schedule property and that her father died nearly 35 years back. After the death of father of the 2nd defendant, the property

would devolve upon his wife and his three daughters and in view of death of the mother of the 2nd defendant, namely Jahangir Bee, the extent of her share in the property would also devolve on the surviving legal heirs. Since there was no material brought on record that the plaintiffs and the 1st defendant have relinquished their respective rights in favour of the 2nd defendant, the property in question was dealt with as joint family property belonging to the family jointly and hence granted partition in equal measure amongst the children of Jahangir Bee.

4. Whereas the Appellate Court in paragraph 12 of its judgment dealt with oral gift of the suit schedule property in favour of mother of the 2nd defendant/appellant by her father and in view of the said oral gift, Smt. Jahangir Bee is stated to have executed a further gift deed in favour of the 2nd defendant, which is marked as Ex.B.5 and dealt with the same. However, the 2nd defendant could not establish by any relevant evidence about the oral gift said to have been accorded by her father in favour of her mother. In the absence of any such proof of oral gift, the same cannot be taken as established. It would also be appropriate to notice that Smt. Jahangir Bee has not taken any such plea relating to oral gift of suit schedule property in her favour by her husband. Ex.B.5 does not mention as to how the donar has title to the property in question. In view of these concurrent findings of fact, the substantial questions as framed by the appellant in Ground No.15-A of Memorandum of Grounds of Appeal cannot be characterized as substantial questions of law arising for consideration in this Second Appeal and in fact those questions are purely questions of fact and law, but not substantial questions of law. Hence, the second appeal cannot be granted admission. As the concurrent findings are questions of fact, accepting the conclusion drawn by respective Courts below, the Second Appeal stands dismissed at the stage of

admission, but, however without costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

NOOTY RAMAMOZHANA RAO, J

DECEMBER 11, 2015

YVL

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

—

—

—

SECOND APPEAL No.835 of 2015

Date:11.12.20.15

-
YVL