

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.192 OF 2003

AND

C.C.No.1723 of 2013

COMMON JUDGMENT:

The unsuccessful sole defendant had originally filed this Second Appeal under Section 100 of the Code of Civil Procedure, 1908 assailing the decree and judgment dated 28.10.2002 in A.S.No.86 of 2000 on the file of the learned I Additional District Judge, Cuddapah. The learned I Additional District Judge while allowing the said first appeal had set aside the decree and judgment dated 31.08.2000 of the learned Junior Civil Judge, Pulivendla and had decreed the suit in O.S.No.176 of 1998 filed by the Plaintiffs/respondents for declaration of right and title to the plaint schedule property and consequential perpetual injunction.

2. The first appellant/sole defendant had died during the pendency of this appeal and his legal representatives were brought on record as appellants 2 to 4. Though the appeal against the 4th respondent/4th plaintiff was dismissed on her death as abated, there is no abatement of the whole appeal as the other plaintiffs, who are claiming exclusive interest in the property and also the deceased 1st defendant, who is her son, and his legal representatives were already on record and are representing the estate and as the other two brothers of the deceased 1st defendant are not claiming any interest in the subject property.

3. I have heard the submissions of the learned counsel for the appellants 2 to 4 and the learned counsel for the plaintiffs 1 to 3/ respondents herein. I have perused the material record.

4. At the time of the admission of this second appeal, this Court had taken note of the substantial questions of law mentioned in grounds nos.2 and 3 of the grounds of appeal, which read as follows:-

2. Whether the appellate Court was justified in holding that the 4th respondent (plaintiff) had right over the plaint schedule properties to execute the gift deed (Ex.A2) in favour of respondents 1 to 3 (plaintiffs 1 to 3) when the 4th plaintiff had no absolute right over the plaint schedule properties as they belong to the father of the appellant which are fell to his share under partition deed dated 24.11.1971 (Ex.A1) and on the death of the father of the appellant intestate the 4th plaintiff is widow and the appellant along his two brothers would inherit the plaint schedule properties jointly as coparceners and as such the gift deed executed by 4th

plaintiff is not valid and not binding on the appellant consequently suit for injunction against co-owner is not maintainable.

3. Whether the appellate Court was correct in came to conclusion that 4th plaintiff had become absolute owner of plaint schedule properties after the death of her husband which is contrary to the provision under Section 8 of Hindu Succession Act, 1956 wherein it contemplates that the property of male Hindu dying intestate and the words shall devolve occurring in Section 8 make it very clear that the property whose devolution is provided for by that section must be the property of a person who dies after the commencement of the Act.

[Reproduced verbatim]

5. To adjudicate the *lis* and answer the substantial questions of law, it is necessary to refer the cases pleaded by the parties.

5.1. The basic facts and the plaint averments, in brief, are as follows:-

The plaintiffs 1 to 3 are the daughters and the defendant is the son of 4th plaintiff and her husband Rama Krishna Reddy. The plaint schedule property is one of the properties, which originally belonged to late Rama Krishna Reddy. During his lifetime, the said Rama Krishna Reddy and his three sons *viz.*, the defendant, Diwakar Reddy and Jagan Mohan Reddy had partitioned the properties by virtue of a registered partition deed dated 24.11.1971. The registration extract of the said partition deed is exhibit A1. Subsequently, the said Rama Krishna Reddy had died intestate leaving behind the plaintiffs, the sole defendant (since died) and other two sons *viz.*, Diwakar Reddy and Jagan Mohan Reddy. The plaintiffs are in exclusive possession and enjoyment of the plaint schedule property, which is one of the properties that fell to the share of Rama Krishna Reddy in the aforesaid partition. The 4th plaintiff, as per the wishes of her husband Rama Krishna Reddy and out of love and affection had executed a registered gift deed dated 09.06.1992, under the original of exhibit A2 in favour of her daughters i.e., plaintiffs 1 to 3. And, accepting the said course, the other two sons of Rama Krishna Reddy *viz.*, Diwakar Reddy and Jagan Mohan Reddy had attested the said gift deed and that by virtue of the said gift deed executed by the 4th plaintiff-the mother in favour of her daughters i.e., plaintiffs 1 to 3, they have become owners of the property and that they are having right and interest in the property, and therefore, they had filed the suit for declaration of title and consequential perpetual injunction as the other brother i.e., the sole deceased defendant, who did not attest the gift deed had developed an ill-will to knock away the plaint schedule property.

5.2. The defence of the sole defendant is this: - 'The division of the properties between Rama Krishna Reddy and his three sons including him in the year 1971 by virtue of partition deed is true. Rama Krishna Reddy died intestate about 16 years prior to the suit. After his death, his share of property, which is his separate property, devolved upon all his legal heirs. The 4th plaintiff has no exclusive right over the property. The gift deed is not valid. This defendant being one of the sons of late Rama Krishna Reddy has got a share in the suit schedule property. Hence, the suit is liable to be dismissed.

5.3. Based on the above pleadings, the trial Court had framed the following issues:-

1. Whether the plaintiffs are entitled to declaration of right and title to the plaint schedule properties ?
2. Whether the plaintiffs are entitled for permanent injunction restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the plaint schedule properties as prayed for ?
3. Whether the defendant is a co-owner for the plaint schedule property ?
4. To what relief ?

5.4. At trial, the plaintiffs 4 and 2 and their supporting witness were examined as PWs1 to 3 and apart from the exhibits A1 and A2, which are aforementioned, exhibits A3 and A4, the notices exchanged were also marked. The defendant and his supporting witness were examined as DWs1 and 2 and exhibits B1 to B46 were marked. Exhibits B1 to B4 are the postal acknowledgements for the reply notice. Exhibit B5 is the registration extract of the partition deed (=exhibit A1) and exhibits B6 to B46 are the tax receipts.

6. The learned counsel for the appellants would submit that the trial Court had accurately considered the facts and the evidence in detail and also the legal position applicable to the facts of the case and had rendered a well considered judgment and that the Court below without properly appreciating the facts and evidence and also the legal position had erroneously set aside the well considered and well reasoned judgment of the trial Court and that the 4th plaintiff has no exclusive and absolute right over the property of her husband, who had died

intestate, and that the 4th plaintiff has no right to execute a gift deed in favour of her daughters (the plaintiffs 1 to 3) and that the said gift deed is void insofar as the 1/7th share of the sole defendant (since died); and, that the appellants 2 to 4 being the legal representatives of the deceased sole defendant, are entitled to a 1/7th share in the suit schedule property as per Section 8 of the Hindu Succession Act, which applies to the successors in the case of intestate death of a male belonging to Mitakshara.

7. On the other hand, the learned counsel for the plaintiffs 1 to 3 would contend that admittedly there is a partition in the year 1971 between the father and his sons and that the father's share was being enjoyed by the mother i.e., 4th plaintiff and that the 4th plaintiff out of love and affection had executed a registered gift deed in favour of her three daughters i.e., the plaintiffs 1 to 3 and that the said gift deed was attested by two of her sons viz., Diwakar Reddy and Jagan Mohan Reddy and that the plaintiffs 1 to 3 are in exclusive possession having acquired right by virtue of the said gift deed under the original of exhibit A2 and that, therefore, the Court below has rightly decreed the suit by setting aside the decree and judgment of the trial Court, which did not correctly appreciate the facts, the evidence and the law applicable to the case.

8. I have noted the submissions. The issues incidentally covered by the substantial questions and involved in the suit need not detain this Court for long as all the facts are admitted. One Rama Krishna Reddy, who had died intestate, had left behind his wife, the 4th plaintiff (since deceased), three daughters i.e., plaintiffs 1 to 3 and three sons i.e., the defendant, Diwakar Reddy and Jagan Mohan Reddy. During his life time, the properties were partitioned amongst Rama Krishna Reddy-the father and the sons and in that partition the plaint schedule property fell to the share of the father, Rama Krishna Reddy. After Rama Krishna Reddy had died intestate, according to the plaintiffs, the 4th plaintiff had exclusively come into possession of the plaint schedule property, which is the property of her husband, and that as per husband's wish and out of love and affection, she had executed registered gift deed under the original of exhibit A2 and had gifted the said property to plaintiffs 1 to 3, who are her daughters and that the said gift deed was attested by two of her sons viz., Jagan Mohan Reddy and Diwakar Reddy (who are not parties to the suit) but not by the defendant herein. On this score, the

plaintiffs claimed a declaration of title and consequential perpetual injunction against the defendant, who is their brother and who did not attest exhibit A2 gift deed executed in their favour by their mother. The defendant's contention is that admittedly there is a partition between the father and the sons (including him) and that in that partition the plaintiff schedule property admittedly fell to the share of the father as is evident from the registered partition deed-exhibit A1 and that after the intestate death of his father, the plaintiff schedule property devolved upon all the legal heirs of Rama Krishna Reddy i.e., the plaintiffs, the defendant and his two brothers in accordance with the provision of Section 8 of Hindu Succession Act, 1956 (for short 'the Act').

9. Having regard to the undisputed facts and contentions, it is necessary to refer to Sections 6 and 8 of the Act, which read as under.

Section 6 of the Act reads as under :-

Devolution of interest in coparcenary property:-

1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,

- a) by birth become a coparcener in her own right in the same manner as the son;
- b) have the same rights in the coparcenary property as she would have had if she had been a son;
- c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

Section 8 of the Act reads as under:-

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) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- d) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- e) lastly, if there is no agnate, then upon the cognates of the deceased.

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

10. Section 8 of the Act operates in cases where a Hindu male dies intestate. In such an event, the devolution would be through succession in favour of his class I heirs and in their absence class II heirs and so on. In the case on hand since the partition had already taken place during the life time of Ramakrishna Reddy, a transformation of the character and nature of the property had taken place, and therefore, the property in the hands of Rama Krishna Reddy had acquired the character of a separate property. Section 6 of the Act gets attracted whenever a Hindu male, who is a member of coparcenary dies before any partition in the family has taken place. In such an event, his interest in the coparcenary property would devolve by survivorship and not by succession. Thus, if one of the coparceners dies before the partition has taken place, his interest in the coparcenary would result in the change of shares of the other surviving coparceners. In this case there is no need to go into the exception carved out by the proviso to the Section as admittedly a partition had taken place during the life time of Ramakrishna Reddy and the subject matter is the share that was allotted to him at such partition. Therefore, Section 6 of the Act does not get attracted in this case. And, Section 8 of the Act only gets attracted and operates as Ramakrishna Reddy, a Hindu male of Mitakshara holding separate property in his own right had died after the partition. Hence, the devolution of his property would be through succession in favour of his class-I heirs under Section 8 of the Act. Therefore, the 4th plaintiff, who has got a share in the property of her husband along with her children, has no right to gift the entire property to her daughters, the plaintiffs 1 to 3 and, therefore, the gift deed is void insofar as the shares of the other sharers.

11. Viewed thus, this Court finds that the trial Court is right in holding that the defendant/appellant herein is entitled to a 1/7th share in the property of Rama Krishna Reddy, which is the present plaint schedule property, and that therefore, the 4th plaintiff has no exclusive absolute right to gift away the property to her daughters. Since this Court has come to a conclusion that Section 8 of the Act operates in this case and that the devolution would be through succession in favour of class I heirs, the defendant, being the son of Ramakrishna Reddy, is accordingly entitled to a 1/7th share.

12. Hence, this Court finds that the Court below without properly appreciating the

facts and without properly applying the law applicable, has erroneously set aside the well reasoned and well considered decree and judgment of the trial Court. Therefore, this Court finds that the Court below is not justified in reversing the decree and judgment of the trial Court.

13. In the result, the Second Appeal is allowed setting aside the decree and judgment of the Court below. Consequently, the decree and judgment of the trial Court are restored. No costs.

14. Before parting with the second appeal, it is to be noted that the C.C.No.1723 of 2013 is filed by the respondents against the appellant complaining violation of orders dated 26.02.2003 in CMP.No.3874 of 2003 in S.A.No.192 of 2003. However, it is submitted that the contempt case may be disposed of along with the second appeal. In view of the findings in the Second Appeal and as any willful violation of the orders of this Court is not established as required under facts and law, the Contempt Case is liable to be dismissed.

15. Accordingly, the Contempt Case is dismissed. No costs.

Miscellaneous Petitions, if any, pending in the Second Appeal and the Contempt Case shall stand closed.

JUSTICE M.SEETHARAMA MURTI

13.07.2015
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