

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

SECOND APPEAL No.844 of 2014

JUDGMENT:

This Second Appeal is filed challenging the judgment and decree dt.25-04-2014 in A.S.No.73 of 2012 of the Judge, Family Court-cum-VI Additional District Judge, Kadapa confirming the judgment and decree dt.24-09-2012 in O.S.No.492 of 2009 of the Principal Junior Civil Judge, Kadapa.

2. The appellant herein is plaintiff in the above suit. The father of plaintiff is P.W.2. The 1st defendant is sister of Subbaiah and 2nd defendant is her husband. One Venkata Subba Reddy is another brother of plaintiff's father. The paternal grand father of plaintiff is Dadireddy Subbaiah (for short "DS").

3. Originally the plaintiff filed the suit only for the relief of perpetual injunction against respondents/defendants. But subsequently, the plaint was amended and the relief of declaration of plaintiff's right and title over the plaint schedule property was also sought.

4. According to plaintiff, the plaint schedule property is ancestral property of DS, the paternal grand

father of plaintiff; that he had ancestral properties of extent Ac.6.23 cents, which he orally divided between his two sons Venkata Subbareddy and P.W.2 on 10-04-1972 in the presence of village elders by name Mamilla Gurivi Reddy, Mamilla Chennareddy and others; in that oral partition, plaintiff's father P.W.2 was allotted the plaint schedule property; that plaintiff's grand father died in 1993 and her paternal grand mother died in the year 2000 and Venkata Subbareddy, brother of P.W.2 died 20 years back. The plaintiff contended that a registered gift deed Ex.A-1 dt.06-08-2009 was executed by P.W.2 in her favour and pursuant to the said gift, she was put in possession of the property and she was enjoying the same till filing of the suit. She alleged that when she engaged a tractor on 16-09-2009 to plough the property, defendants came and objected. So she filed the suit for the above relief.

5. The defendants filed a written statement contending that the plaint schedule property is owned by 1st defendant's father and the plaintiff's paternal grand father by name DS and he had got the land and other lands from his father by way of inheritance. The defendants denied the oral partition and contended that DS alone enjoyed all the properties except Ac.1.00 cents in Sy.No.1224 and he had gifted this item to the

defendants 15 days prior to their marriage under Ex.B-1 registered gift deed dt.09-07-1974 towards pasupu kumkuma and defendants were in possession and enjoyment of the same since the date of gift deed. They also contended that P.W.2 was never in possession and enjoyment of Ac.1.00 of land at any point of time and in fact 2nd defendant is cultivating the balance Ac.0.61 cents along with Ac.1.00 of land of the land gifted to her by DS. They alleged that plaintiff manipulated the entries in the pattadar passbooks issued to DS by managing the Revenue authorities and concocted all the revenue records. They also contended that plaintiff could not have filed the suit when both her parents were alive through her maternal grand mother. It is specifically contended that the alleged guardian of the plaintiff is not the grand mother of plaintiff and that she is the mother of 1st wife of P.W.2 while plaintiff is the daughter born to 2nd wife of P.W.2. They also made a counter claim of a perpetual injunction against plaintiff.

6. A written statement was filed by plaintiff to the counter claim reiterating the contents of the plaint and contending that there was no gift under Ex.B-1 on 09-07-1974 by DS to defendants.

7. The Court below framed the following issues

and additional issues:

“1. Whether plaintiff is entitled for permanent injunction restraining defendants, their men from interfering with the plaintiff over schedule property as prayed for?

2. To what relief?

Additional issues:

“1. Whether plaintiff is entitled for declaration of right and title over schedule property?

2. Whether defendants are entitled for permanent injunction as prayed for?”

8. Before the trial Court, the plaintiff examined P.Ws.1 to 3 and marked Exs.A-1 to A-14. The defendants examined D.Ws.1 to 4 and marked Exs.B-1 to P-10

9. By judgment dt.24-09-2012, the trial Court dismissed the suit. It held that plaintiff failed to prove that there was an oral partition between DS, P.W.2 and Venkata Subbareddy on 10-04-1972 since Gurivi Reddy and Mamilla Chenna Reddy, who are said to have been present at the time of oral partition, were not examined; and although P.W.3 stated that he was related to both parties and there was a partition in 1972, he admitted in cross-examination that he was not present at the time of oral partition. It also relied on the contents of Ex.B-9 to disbelieve the oral partition. It held that defendants were able to establish the execution of Ex.B-1 gift deed in their

favour by examining the attestors of said document. It also held that the documents filed by plaintiff, in particular Exs.A-2 to A-4 appear to have been manipulated by taking advantage of similarity in the names between plaintiff's father P.W.2 and the ancestor of DS. It further held that the gift of Ac.1.00 by DS is valid because ancestral property was of extent Ac.6.23 cents and the 3 male members i.e. DS, P.W.2 and other son Venkata Subbareddy would each get Ac.2.00 cents each; and under the amended Hindu Succession Act, 1956, 1st defendant is also a coparcener. Since defendants were found to be in possession and enjoyment of the plaint schedule property, and the plaintiff herself had issued a legal notice Ex.A-8 to a third party informing not to purchase the plaint schedule land from defendants, defendants were held entitled to relief of perpetual injunction.

10. Challenging the same, A.S.No.73 of 2012 was filed by appellant.

11. By judgment dt.25-04-2014, the lower appellate Court rejected the appeal, and confirmed the findings of trial Court.

12. Challenging the same, this Second Appeal is filed.

13. The learned counsel for appellant sought to contend that the judgments of the Courts below are erroneous; when the property is admittedly ancestral property, the Courts below ought to have believed the oral partition dt.10-04-1972 and accepted the plea of plaintiff that plaintiff schedule property was allotted to her father P.W.2 in the said partition and hold that he was competent to execute Ex.A-1 gift deed in her favour.

14. The plaintiff has only examined P.W.2 and none else to prove the alleged oral partition in 1972. The evidence of P.W.2 regarding the oral partition is self-serving and cannot be relied upon in the absence of independent corroboration. The plaintiff could have examined the family members of her paternal uncle Venkata Subbareddy in support of her plea of the 1972 partition, but plaintiff did not do so. Therefore, the plea of oral partition was rightly disbelieved by both the Courts below.

15. D.W.2 was examined by defendants to prove the execution of Ex.B-1 gift deed on 09-07-1974 by DS in favour of defendants. The possession of defendants since that date was established through the evidence of D.Ws.2 to 4. The pattadar pass books and title deed Exs.A-3 and A-4 filed by plaintiff were not stamped while Ex.B-2 pattadar pass book and title deed

produced by defendants contain stamp of revenue authorities to prove its genuineness. Ex.B-4 adangal showed the possession of 1st defendant in respect of plaint schedule property. Therefore, in my opinion, the Courts below rightly did not accept the plea of plaintiff regarding her possession of plaint schedule property, and on the basis of the established possession of defendants, granted relief of injunction in favour of defendants.

16. I am of the opinion that there is no question of law much less substantial question of law arising for consideration in this Second Appeal, that the concurrent findings of both the Courts below have been rendered on correct appreciation of evidence and did not warrant any interference by this Court in exercise of limited jurisdiction of this Court under Section 100 CPC.

17. Therefore, the Second Appeal fails and is accordingly dismissed at the stage of admission. No costs.

18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-03-2015

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