

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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S.A.No.1044 of 1998

JUDGMENT:-

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This Second Appeal, under Section 100 of C.P.C., by the unsuccessful defendants 5 and 6, is directed against the judgment and decree dated 13.08.1998 of the learned Senior Civil Judge, Penukonda, passed in A.S.No.8 of 1995, whereby, the learned Senior Civil Judge, while allowing the said appeal, had set aside the judgment and decree dated 30.01.1995 of the learned District Munsif, Penukonda, passed in O.S.No.117 of 1989, which is filed by respondents 1 to 9 herein for partition of Acs.2.78 cents of land out of Acs.5.56 cents Government Dry in Survey No.302 and Acs.1.15 cents of land out of Acs.2.31 cents Government Dry in Survey No.303/2 constituting a contiguous plot of total Acs.3.93 cents, within the boundaries, morefully described in the schedule annexed to the plaint and to allot Acs.1.80 cents of land to plaintiffs 2 to 11 after converting joint possession into separate possession.

2. I have heard the submissions of the learned counsel for the appellants/defendants 5 and 6 ('the defendants 5 and 6', for brevity) and the learned counsel for the respondents/plaintiffs ('the plaintiffs', for brevity). I have perused the material record.

3. At the time of admission of this second appeal, this Court had taken note of the substantial questions of law stated in grounds nos.2 and 3 and the said substantial questions of law are as follows:-

2. Whether a suit for partition is maintainable in the absence of a suit for declaration when the title of the vendors to the plaintiffs/respondents is denied and in view of the finding of the trial Court that the respondents herein failed to prove that they are in joint possession of the suit schedule property and when the respondents failed to establish their shares in the suit

schedule property.

3. Whether the appellate Court was correct in allowing the appeal of respondents 2, 3 and 6 clearly deposed in their cross-examination that their vendors are in still possession of the suit schedule property and that they do not know the exact shares of the vendors in the suit schedule property, which goes to show that the sales in favour of the plaintiffs through the exhibits A.1 to A.5 are only nominal and sham transactions and whether any interest passed on to the vendees at all.

[reproduced verbatim]

4. The learned counsel for the defendants 5 and 6/the appellants would contend that the trial Court, by a well-reasoned judgment, dismissed the suit of the plaintiffs by upholding the defence of defendants 5 and 6 and that the Court of first appeal, without properly appreciating the facts and the evidence, had erroneously upset the well considered judgment of the trial Court. It is also contended as under: "That the trial Court had rightly appreciated the fact that the sale deeds under exhibits B1 and B2 are prior in point of time than the sale deeds under exhibits A1, A3 and A4 marked on the side of the plaintiffs and that the Court below ought to have seen that the suit is not maintainable in the absence of seeking relief of declaration of title of the vendors of the plaintiffs, as the title of the said vendors is denied. That the Court below ought to have seen that the plaintiffs failed to prove that they are in joint possession of the plaint schedule properties and that on the other hand, they had admitted that their vendors are still in possession of the property. That the Court below ought to have seen that the plaintiffs could not establish the shares (exact shares) of their vendors in the plaint schedule properties and that the Court below ought to have seen that the sale deeds relied upon by the plaintiffs are sham and nominal and they are brought into existence to claim some share in the properties, even though no right, title or interest passed on to the vendees, i.e., the plaintiffs.

5. On the other hand, learned counsel for the contesting plaintiffs, while supporting the decree and the judgment of the Court below, would contend that defendants 5 and 6, who had contested that Item No.1 of the plaint schedule property is Inam land, could not establish the said plea by producing any evidence, much less valid

documentary evidence, and that defendants 5 and 6 themselves contended that they had purchased some portion of Item No.1 of the plaint schedule property from the fourth defendant under registered sale deeds which are exhibited and that the sale deeds of defendants 5 and 6 are not true, valid and binding, either on the vendors of the plaintiffs or the plaintiffs and that the defendants' contention that they purchased from the ostensible owner would only go to show that they are not the *bona fide* purchasers and that they did not make any enquiries about the right, title and interest of their vendor to sell the property under the sale deeds before purchasing the said property and that defendants 5 and 6, having contended that Item No.2 of the plaint schedule property is the self acquired property of the Venkataramappa, did not prove the said defence and, therefore, the Court below, having accurately considered the facts and the evidence on record, had rightly decreed the suit by allowing the first appeal and by setting aside the judgment and decree of the trial Court.

6. Now, the substantial questions are taken up.

7. Admittedly, the property originally belonged to Venkataramappa, who was said to have died 5 or 6 years prior to filing of the suit. The suit was filed in the year 1989. Having regard to the evidence on record, the Court below had recorded a finding that Venkataramappa left behind him Lakshmiddevamma-his wife, Ramalakshamma-his daughter, Nagaraju and Venkatramudu – his sons, who are the defendants 1 to 4. Though the plaintiffs had contended that Venkataramappa had three more sons by name Brahmaiah, Nagachari and Govindappa, having regard to the evidence of the plaintiffs, the Court below had recorded a finding that it was only established that Venkataramappa had two more sons only by names Brahmaiah and Nagachari and not three more sons and that the said two sons pre-deceased Venkataramappa and their shares devolved upon their mother Lakshmiddevamma-the first defendant.

7.1 Exhibits A1 to A3 are the sale deeds of the plaintiffs. Under exhibit A1, the third plaintiff had purchased 41 cents of land in Item no.1 and 19 cents of land in Item no.2 of the plaint schedule property from defendants 1 to 3. Under exhibit A3, the second plaintiff had purchased 41 cents of land in Item no.1 and 19 cents of land in

Item no.2 of the plaint schedule property from defendants 1 to 3. Under exhibit A4, the deceased first plaintiff Thippanna had purchased 41 cents of land in Item no.1 and 19 cents of land in Item no.2 of the plaint schedule property. On the death of the 1st plaintiff, his Legal Representatives are brought on record as the plaintiffs 4 to 9. Later, during the pendency of the suit the third and fourth plaintiffs were transposed as the seventh and the eighth defendants respectively. These documents, exhibits A1 to A3 were exhibited through PW1-the third plaintiff (Chinna Ramanna). The second plaintiff and the sixth plaintiff, who is the son of the deceased first plaintiff, were examined as P.Ws 2 and 3.

7.2 Except the appellants/defendants 5 and 6, none of the defendants, including the vendors of the plaintiffs namely the defendants 1 to 3, had contested the suit. Under exhibit B1, the defendants 5 and 6 had purchased from the fourth defendant – Venkataramudu, S/o. Venkataramappa and his minor son, a half share each out of Item Nos.1 and 2 of the plaint schedule property on the premise that the 4th defendant is the ostensible owner of the property and that he got the same in a partition with his brother the 3rd defendant. It is to be noted that the defendants 5 and 6 did not file any document to prove the alleged partition between the defendants 3 and 4, who are the sons of Venkataramappa and also to show that the defendants 1 and 2, who are the wife and the daughter of Venkataramappa had relinquished their rights in the property in favour of the said two sons of Venkataramappa and therefore, their shares in the joint family property had remained intact till they had alienated their shares along with the 3rd defendant to the plaintiffs 1 to 3. Based on evidence, the Court below had also rejected the contention of the defendants 5 and 6 that the 1st defendant and the 2nd defendant never behaved as owners of the entire property and that the entire property was enjoyed by the sons of Venkataramappa and that 4th defendant who is one of the sons of Venkataramappa is the ostensible owner and that he was managing the property. Sine the family of Venkataramappa had in all five male members including the two surviving and the two predeceased sons of Venkataramappa, the Court below had held that the first defendant-Lakshmiddevamma, who is the wife of Venkataramappa, has become entitled to 2/5th share in the property on the death of her two unmarried sons being the only Class-I heir and that on the death of her husband Venkataramappa, she

became entitled, along with her daughter Ramalakshamma and the surviving sons Nagaraju and Venkataramudu, to the $\frac{1}{5}$ th share of her husband, Venkataramappa, and that therefore, Lakshmiddevamma-the 1st defendant had become entitled to $\frac{9}{20}$ th share and that the second defendant-the daughter became entitled to $\frac{1}{20}$ th share and the defendants 3 and 4, who are the sons of Venkataramappa, became entitled to $\frac{1}{4}$ th share each and that therefore, the documents executed by the fourth defendant under exhibits B1 and B2 are valid in respect of his $\frac{1}{4}$ th share only and that defendants 5 and 6 cannot claim any right to any higher share than that by virtue of exhibits B1 and B2. Having so held, the Court below had decreed the suit of the plaintiffs, who are purchasers from defendants 1 to 3, i.e., the wife, the daughter and one of the sons of Venkataramappa, for partition and passed a preliminary decree for partition of entire plaint schedule property of a total extent of Acs.3.93 cents [in two items] and had directed allotment of Acs.1.80 cents to the plaintiffs 2 to 11 (since 1st plaintiff had died), after conversion of joint possession into separate possession. In fact the defendants 5 and 6 had failed to prove by any evidence, much less cogent evidence, that item no.1 of the schedule properties is an Inaam land; and, in fact the said defendants had also claimed that they had purchased part of the item no1 of the plaint schedule property from the 4th defendant and therefore, their contention that it is an Inaam land cannot be countenanced as held by the Court below. No sale deed, if any, in favour of Venkataramappa was filed by the defendants 5 and 6 to show that item 2 of the plaint schedule property was purchased by him and that it is his separate property.

7.3 In this background of material facts of the case and the findings based on facts and the evidence on record, the two substantial questions that are raised and which are referred supra, are not pure questions of law, much less substantial questions of law, as the Court below had recorded a finding of fact that the that the defendants 5 and 6, who are the appellants herein, had failed to establish that Item no.1 of the plaint schedule property is an Inaam Land and that Item no.2 of the plaint schedule property is the separate property of Venkataramappa and that in the facts and circumstances of the case, there is no need to seek a declaration of title and that the plaintiffs' vendors, being admittedly in possession, the plaintiffs' are entitled to seek

partition as the sale deeds under exhibits A1, A3 and A4 executed in favour of the plaintiffs by the defendants 1 to 3 are not nominal and sham transactions and as they were executed by the wife, daughter and one of the sons of Venkataramappa, who had succeeded to their respective shares in the property according to their entitlement under the Hindu Mitakshara Law of succession. Further, the plaintiffs who had purchased from the wife, the daughter and one of the surviving sons of Venkataramappa, their respective properties from out of the pliant schedule properties under exhibits A1 to A3, had rightly instituted the suit for partition and allotment of the total purchased extent towards their share after converting the joint possession into separate possession. The law is well settled that the 3rd party purchasers cannot enter into possession or claim joint possession and that the only remedy open to them is to sue for partition. The possession of one co-owner is possession of all the co-owners and such possession inures for the benefit of all the sharers; and; unless ouster is pleaded and proved the rights of the sharers will not be affected. It is not the case of the defendants that the court below did not accurately consider the facts or that there is perversity either in the appreciation of the facts or the evidence. On a careful consideration of the facts and the evidence, this Court finds no infirmity in the decree and judgment of the trial Court calling for interference. Therefore, this Court finds that there is no merit in this second appeal and the same is liable to be dismissed.

7.4 It is also pertinent to note that this appeal is dismissed against the respondents 9, 10 and 12, i.e., the ninth plaintiff, first defendant and the third defendant, for non-prosecution and that no restoration of appeal is sought against them by the appellants herein/defendants 5 and 6. Having regard to the fact that the second appeal is already dismissed against one of the plaintiffs and also two of the vendors of the plaintiffs, this appeal deserves to be dismissed on that ground also.

8. For the foregoing reasons, I hold that this second appeal lacks merit and is liable to be dismissed. Accordingly, the second appeal is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal, stands closed.

M. Seetharama Murthi, J

04th June, 2015

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