

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

APPEAL SUIT No.1886 of 1994

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JUDGMENT:

_____ The 6th defendant in O.S.No.23 of 1985 on the file of
II Additional Subordinate Judge, Warangal (hereinafter referred to as
'the trial Court'), preferred this appeal challenging the judgment and
decree, dated 09.06.1994, whereunder the decree for partition of
schedule property into five equal shares was passed allotting four
shares to the respondents/plaintiffs while granting one share to the first
defendant i.e., father of the plaintiffs.

2. _____ For convenience of preference, the ranks given to the parties in
the trial Court will be adopted throughout the judgment.

3. _____ The plaintiffs filed the suit for partition of schedule property into
five equal shares and to allot one such share to each of the plaintiffs
and one share to the first defendant, alleging that the schedule
property is a joint family property of the plaintiffs and the first defendant
and they are entitled to claim one share each. It is further contended
that the first defendant was addicted to vices and wasted considerable
joint family property about 10 years ago without any necessity or for
the benefit of joint family and alienated about Acs.10.00 of joint family
land and such alienation is not binding on the plaintiffs. Therefore, the
entire property is to be partitioned among the plaintiffs and the first
defendant and thereby entitled to share. Despite demands made by
the plaintiffs for partition of the plaint schedule property, the first
defendant did not cooperate. Hence, the suit.

4. _____ The first defendant remained *ex parte* and the second defendant
has not filed his written statement. Defendant Nos.3 to 5 filed their
written statement and the 6th defendant also filed separate written
statement.

5. Since the present appeal is filed by the 6th defendant, the contentions raised by the other defendants are irrelevant. Therefore, I am limiting the judgment only to decide the right of the 6th defendant.

6. The 6th defendant filed written statement contending that the suit was filed at the instance of the first defendant and it is a collusive suit to defeat the rights of the defendants while admitting purchase of item Nos.4 to 6 of plaint 'A' schedule property under registered sale deed - Ex.B.1, dated 30.11.1983, for valuable consideration of Rs.29,300/-. Since then, he has been in possession and enjoyment of the schedule property in his own right. The 6th defendant denied the vices said to have been addicted by the first defendant and the sale of the property by the first defendant without any necessity and prayed for dismissal of the suit against him.

7. Basing on the above pleadings, the trial Court framed the following issues:

- (1) Whether plaintiffs 1 and 2 are entitled for partition of the plaint A schedule lands into 3 shares and for separate possession of two such shares as prayed for?
- (2) Whether the plaintiff No.5 is entitled for declaration of title in respect of the plaint B schedule house as prayed for?
- (3) Whether the plaintiff No.5 is entitled for perpetual injunction restraining D.1 from interfering with her possession of the said house?
- (4) Whether the plaintiff Nos. 3 to 5 are entitled for maintenance past and future at Rs.200/- per month and for charge on the share of defendant No.1 in the plaint A schedule property.
- (5) Whether the plaint A schedule lands are ancestral properties of the parties?
- (6) Whether D.1 sold Ac.2-06 gts out of Sy.Nos. 191, 192 and 187 situated at Chityal Village in favour of D.4?
- (7) Whether D.1 sold Ac.2-36 gts out of Sy.No.191 and 192?

- (8) Whether D.1 sold Ac.1-14 gts out of Sy.No.187 totally Ac.4-10 gts situated at Chityal (v) in favour of D.2 on 01.08.80?
- (9) Whether D.2 gave one acre out of Sy.No.191 and 192 to D.3 by way of exchange?
- (10) Whether D.1 is addicted to vices and alienated about 10 acres of joint agricultural lands without any legal necessity or for family benefit as alleged in the plaint?
- (11) To what relief?

And subsequently "Additional Issues" also framed on 07.10.1988:

1. Whether the plaintiff Nos. 1 and 2 are entitled for partition of the plaint A schedule lands into three equal shares by metes and bounds and for allotment of two such shares to them after taking adequate provision for the marriage expenses of plaintiffs 3 and 4 as prayed for?
2. Whether the plaintiffs are entitled for past mesne profits for three years prior to the institution of this suit in proportion to their share and also for mesne profits pending the suit with interest on the said amounts at 12 % p.a. as prayed for?
3. Whether the 5th plaintiff is not competent to be the next friend of plaintiff Nos. 1 to 4 and as to whether the suit is improperly constituted and as such the plaint is liable to be rejected as contended by D.6?
4. Whether the plaintiffs are entitled to claim any subsisting right in the suit schedule lands as on the date of the filing of this suit as contended by D.6?
5. Whether the 5th plaintiff as next friend is estopped from challenging the validity of sale transaction by D.1 and as to whether the plaintiffs are not entitled to question the validity of the sale transaction by D.1 in favour of D.6 in regard to item No. 4 to 6 of the suit A schedule lands for a valuable consideration of Rs.29,300/- under a registered sale deed document bearing no. 2834/83, dated 30.11.1983, and as D.6 is a bonafide purchaser of the said items of the plaint A schedule lands for consideration as contended by D.6?

6. Whether the 5th plaintiff sold the plaint B schedule house to one Annapuram Somaiah for a consideration of Rs.15,000/- and obtained the sale amount about two months prior to 03.10.1988, as contended by D.6?
7. Whether this suit is bad for non-joinder of the senior paternal uncle of plaintiffs 1 to 4 and also for partial partition as contended by D.6?
8. Whether the 6th defendant is entitled for compensatory costs from plaintiff no.5 and from the 1st defendant as contended by D.6?
9. Whether this suit is liable to be dismissed with costs of 6th defendant in a separate set in respect of 5 to 6 of the plaint A schedule properties, as contended by D.6? Though D1 filed written statement as the contents of his statement and contents of D.6 written statements are identical, no additional issues are framed.

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8. During the course of trial, on behalf of the plaintiffs, PWs.1 to 5 were examined and no documents were marked. On behalf of the defendants, DWs.1 to 6 were examined and Exs.B.1 to B.18 were marked.

9. The trial Court, upon hearing both the counsel and considering oral and documentary evidence on record, decreed the suit dividing the property into five shares and allotting four shares to the plaintiffs and one share to the first defendant.

10. Aggrieved by the judgment and decree of the trial Court, the 6th defendant preferred this appeal on various grounds. However, during the course of hearing, Sri D.Ramakrishna, learned counsel for the appellant, confined his argument to claim equities in the event of partition of schedule property, more particularly, to allot item Nos.4 to 6 of plaint 'A' schedule property. Therefore, I myself refrain to decide the controversy between the parties raised before this Court only. Considering the grounds of appeal and the argument advanced by Sri D.Ramakrishna, the learned counsel for the appellant, the point that

arises for consideration in this appeal is:

“Whether the 6th defendant is entitled to claim equities for allotment of item Nos.4 to 6 of plaint ‘A’ schedule property while passing a final decree or not?”

POINT:

11. Undisputedly, the 6th defendant purchased the property under Ex.B.1, dated 30.11.1983 i.e., almost two years prior to filing of the suit. The only contention of the 6th defendant is that the sale of item Nos.4 to 6 of plaint ‘A’ schedule property under Ex.B.1 is for the necessity and the benefit of joint family and the plaintiffs did not produce satisfactory evidence before the trial Court and the trial Court concluded that the sale was not for the benefit of joint family, as the first defendant was addicted to vices. However, the 6th defendant parted with huge amount of Rs.29,300/- and obtained Ex.B.1 for valuable consideration. The finding of the trial Court that the sale is not for the benefit or necessity of the joint family is not supported by any evidence. However, when the property was sold by kartha of the joint family for the debts incurred by him, the same can be said to be for the benefit of joint family.

12. The purpose of sale of the property was not mentioned in Ex.B.1. Even according to the recitals of Ex.B.1, the property was sold by the first defendant, being the kartha of the joint family, and in such a case, it is binding on the plaintiffs and the

6th defendant cannot be denied to claim equities. In **Vriddhachalam**

Pillai vs. Chaldean Syrian Bank Ltd. ^[1], the Hon’ble Apex Court held as under:

“A father can by incurring a debt, even though the same be not for any purpose necessary or beneficial to the family, so long as it is not for illegal or immoral purposes,

lay the entire joint family property including the interests of his sons open to be taken in execution proceedings upon a decree for the payment of debt. The father can, so long as the family continues undivided, alienate the entirety of the family property for the discharge of his antecedent personal debts subject to their not being illegal or immoral. In other words, the power of the father to alienate for satisfying his debts is co-extensive with the right of the creditors to obtain satisfaction out of family property including the share of the sons in such property. Where a father purports to burden the estate by a mortgage for purposes not necessary and beneficial to the family, the mortgage qua mortgage would not be binding on the sons unless the same was for the discharge of an antecedent debt. Where there is no antecedence, a mortgage by the father would stand in the same position as an out and out sale by the father of family property for a purpose not binding on the family under which he receives the sale price which is utilized for his personal needs. After the joint status of the family is disrupted by a partition, the father has no right to deal with the family property by sale or mortgage even to discharge an antecedent debt, nor is the son under any legal or moral obligation to discharge the post-partition debt of the father. Antecedent debt in this context means a debt antecedent in fact as well as in time. The debt must be truly independent and not part of the mortgage which is impeached. The prior debt must be independent of the debt for which the mortgage is created and the two transactions must be dissociated in fact so that they cannot be regarded as part of the same transaction.”

_____ If the principle laid down in the above decision is applied to the present facts of the case, notwithstanding the benefit and necessity of the joint family, the first defendant, being the father/the kartha of the joint family, is competent to alienate the property unless the sale is for immoral or illegal purpose. In the present case, there is absolutely nothing on record to establish that the sale of item Nos.4 to 6 of plaint ‘A’ schedule property is for immoral or illegal purpose. In such case, the sale is binding on the joint family. The 6th defendant, being the purchaser, is entitled to claim equities as per the principle enunciated in the judgments of the Hon’ble Apex Court in **T.S.Swaminathaudayar vs. The Official Receiver of West**

Tanjore^[2] and Krishna Pillai Rajasekharan Nair (D) by Lrs. Vs. Padmanabha Pillai (D) by Lrs. And ors.^[3]

13. However, as the 6th defendant paid Rs.29,300/- as consideration under Ex.B.1 not intending to pay gratuitously, he is bound to recover the amount from the first defendant, if for any reason, equities are denied in view of the principle enunciated under Section 69 of the Indian Contract Act. The total extent of
plaint 'A' schedule property is more than Acs.17.00 and the share of the first defendant is about more than Ac.3.00. But the
6th defendant purchased Ac.7.30 guntas in total under Ex.B.1. In such a case, the 6th defendant is entitled to claim equities for allotment of the property purchased by him for the share of the first defendant while passing final decree. The 6th defendant is also entitled to recover the sale consideration paid in proportionate to the loss caused to him after allotting item Nos.4 to 6 of plaint 'A' schedule property for the share of the first defendant under Section 69 of the Indian Contract Act.

14. Accordingly, the Appeal Suit is disposed of and the judgment and decree of the trial Court is modified directing the trial Court to allot the maximum possible extent out of item Nos.4 to 6 of the plaint 'A' schedule property to the share of the first defendant by working out equities while passing final decree and by giving liberty to the 6th defendant to claim refund of sale consideration subject to permissibility under law which he lost on account of partition, but without costs, in the circumstances.

15. Consequently, Miscellaneous Petitions, if any, pending in this Appeal Suit shall stand closed.

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M.SATYANARAYANA MURTHY, J

Date: 29.06.2015

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[\[1\]](#) AIR 1964 SC 1425

[\[2\]](#) AIR 1957 SC 577

[\[3\]](#) 2004 (2) ALD 21 (SC)