

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.468 of 1998

Date:10.07.2015

Between:

Neelakanta Lokanatha Reddy

... Appellant.

AND

K. Subba Reddy (died)

K. Muddukrishna Reddy and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.468 of 1998

JUDGMENT:

This appeal is preferred against judgment and decree dated 09-02-1998 in A.S.No.38/1992 on the file of Senior Civil Judge, Puttur whereunder judgment dated 18-11-1992 in O.S.No.324/1988 on the file of District Munsif (presently Junior Civil Judge), Nagari is confirmed.

2. The appellant herein is fourth defendant in O.S.No.324/1988, whereas first respondent herein is plaintiff

and respondents 2 to 4 are defendants 1 to 3 in the above referred O.S.No.324/1988. Parties are hereinafter referred to as plaintiff and defendants as arrayed in the suit for convenience and better understanding.

3. Plaintiff filed O.S.No.324/1988 seeking partition of plaint schedule property contending that plaintiff and D1 to D3 constitute a undivided Hindu joint family and joint family had ancestral property of both movable and immovable at Reddivarikuppam @ Kadana Nagaram near R.K.Pet, Thiruttani, Chitoor District. According to plaintiff, those ancestral properties were sold in the year 1960 and with the sale proceeds, the suit schedule properties were purchased in the year 1963 in the name of D1, who was minor at that time as the plaintiff was suspected to be spendthrift. According to plaintiff, father of D4 was kept as guardian to the minor D2 who is sister's husband of plaintiff. According to plaintiff, though property was purchased in the name of D2, plaintiff was in possession and enjoyment of the plaint schedule properties and cultivating the lands by raising various crops. According to plaintiff, there were three wells and he dug a new well and laid pipelines and installed electrical motor and pumpset to irrigate the suit lands. According to plaintiff, after purchase of this property, he begotten two more sons and the entire source of income for the joint family was through cultivation of suit properties, plaintiff entered into an agreement of sale in respect of suit property with one Munirathnam Udayar of Ammiyarkuppam

Village and received Rs.24,000/- on two instalments, but the said purchaser has not evinced any interest to get a sale deed in his favour, but he was put in possession of the property from the date of agreement and for redelivery of the property, purchaser demanded return of Rs.24,000/- and that the plaintiff paid Rs.20,000/- to his brother-in-law for purchase of lands in his village for the benefit of joint family, but he has not purchased any lands. According to plaintiff, D1 wants to marry his maternal uncle's daughter, who cheated the plaintiff and for that reason, plaintiff was reluctant for the said alliance and taking advantage of this situation, D4 got a fraudulent sale deed from D1 as if D1 is the absolute owner of the entire suit property. According to plaintiff, D1 has no right over the entire suit property as they are joint family properties and at best, he can sell his 1/4th share but not more than that. According to plaintiff, sale deed dated 24-11-1983 executed by D1 is not binding on plaintiff, D2 & D3 as they are not parties and that the plaint schedule properties are to be partitioned into four equal shares and one such share to be allotted to plaintiff by metes and bounds and that plaintiff is entitled for mesne profits also from the date of the suit till realisation.

D4 contested the suit and filed written statement, whereas remaining defendants 1 to 3 remained *ex-parte*. According to D4, D1 is the absolute owner of the suit properties and they are not purchased from out of the joint family funds and according to D4, his father Narayan Reddy purchased the

suit property in the name of D1 due to love and affection towards the said boy being son of his brother-in-law as such D1 is the exclusive owner of the suit property. It is further contended that plaintiff was not left with any money, after discharging the debts and therefore, he has not paid any consideration for purchase of the suit property in the name of D1. According to D4, Narayan Reddy allowed plaintiff to cultivate the suit property as D1 was in his custody and protection. It is further contended that plaintiff once made an attempt to sell away the suit lands, but as the properties were in the name of D1, purchaser refused to have a sale deed for the minor properties. It is further contended that plaintiff filed O.P.No.341/1975 before District Munsiff, Chittoor seeking permission to sell the properties belonging to D1, wherein he specifically pleaded that the properties belong to D1 and that they are the self-acquired properties of D1 and therefore, the suit for partition is not maintainable and the plaintiff is not entitled for the reliefs claimed.

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

- “(i) Whether the 1st defendant has no right to sell the suit prosperities?”*
- (ii) Whether the sale by 1st defendant to 4th defendant is valid and binding?*
- (iii) Whether the father of 4th defendant paid consideration and got the sale deed dated 31-10-1963 written in the name of the 1st defendant?*

- (iv) *Whether the father of 4th defendant purchased undivided 1/3rd share in the suit properties?*
- (v) *Whether the plaintiff has sold the lands at Reddivari Kuppam to third parties?*
- (vi) *Whether the plaintiff cannot sell the motor, pumpset and pipe lines without court's permission?*
- (vii) *Whether the plaintiff is nothing to do with the suit properties?*
- (viii) *Whether the suit properties are the self acquired properties of the 1st defendant?*
- (ix) *Whether the plaintiff, D2 and D3 are not entitled to any share in the suit properties?*
- (x) *Whether the 4th defendant is entitled to pay means profits?*
- (xi) *To what relief?"*

5. During trial, five witnesses are examined and seven documents are marked on behalf of plaintiffs, whereas four witnesses are examined and five documents are marked on behalf of defendants.

6. D4 filed O.S.No.316/1987 seeking relief of permanent injunction against plaintiff herein & defendants 1 & 2 and that suit and this suit were tried together and a common judgment is pronounced by dismissing O.S.No.316/1987 and decreeing O.S.No.324/1988. Aggrieved by the decree passed in O.S.No.324/1988, D4 preferred appeal to the First Appellate Court in A.S.No.38/1992 and the learned Appellate

Judge, on a reappraisal of oral and documentary evidence, confirmed the findings of the trial Court and aggrieved by the same, D4 preferred the present second appeal.

7. The following are the substantial questions of law that are raised in the grounds of appeal:-

- “(a) Whether the Lower Appellate Court justified and acted legally in coming to the conclusion that the plaint schedule properties are joint family properties of Sri K. Subba Reddy and his sons since K. Subba Reddy purchased the same on the same with joint family funds in the name of his son K. Muddu Krishna Reddy even though K. Narayana Reddy purchased the said property in the name of K. Muddu Krishna Reddy for the benefit of K. Muddu Krishna Reddy.*
- (b) Whether the lower appellate Court justified in coming to the conclusion that K. Muddu Krishna Reddy has no right to sell the entire property since the said property is joint family property and the sale deed executed in favour of the appellant herein is not binding on K. Subba Reddy and his other two sons, and K. Subba Reddy and his other two sons are having 1/4th share each in the said property.*
- (c) Whether the lower appellate Court justified in coming to the conclusion that Sri N. Lokanatha Reddy's possession becomes un-lawful and N. Lokanatha Reddy is not in possession of the said property as on the day of filing the suit, therefore, he is not entitled for injunction, even though K. Subba Reddy admitted N. Lokanatha Reddy's possession.*
- (d) Whether the lower appellate Court justified in coming to the conclusion that K. Muddukrishna Reddy has no right to dispose of the suit property to N. Lokanatha Reddy more than his 1/4th share and the title of N. Lokanatha Reddy is not recognisable and his only remedy is to file partition suit to get 1/4th*

share of K. Muddukrishna Reddy.

- (e) *Whether the lower appellate Court justified in coming to the conclusion that N. Lokanatha Reddy is the purchaser of the Joint Family property and an injunction cannot be granted against co-owners. Hence he is not entitled for injunction.”*

8. This Court admitted the appeal treating the above grounds as substantial questions of law.

9. Heard arguments.

10. Advocate for appellant submitted that the suit schedule properties are not the joint family properties of plaintiff and his branch and that D1 is the absolute owner.

He submitted that plaint schedule properties are the self-acquired properties of D1 and the evidence on record would clinchingly show that sale consideration for purchase of suit properties in the name of D1 was paid by father of the appellant and both trial Court and appellate Court erred in treating that the suit schedule properties were purchased with the joint nucleus. It is further submitted that the main question of law involved in this appeal is if the suit properties are purchased with joint nucleus, the decree passed by trial Court is right, but if the suit properties are purchased with the funds provided by father of appellant, then the decree granted by trial Court and confirmed by first appellate Court is not correct.

11. On the other hand, Advocate for plaintiff submitted that

except taking a plea that the properties are purchased with the money provided by father of the appellant, no convincing evidence is produced before the trial Court and even the appellant is not examined as a witness and the entire version focused on behalf of appellant is only a hearsay version and the trial Court and first appellate Court have rightly negated the version of appellant and that there are no grounds to interfere with the concurrent findings. He further submitted that there is no substantial question of law involved in this appeal and all the grounds urged as substantial question of law are in respect of factual aspects. It is further submitted that the appellant is in wrongful possession of the suit schedule properties and both trial Court and appellate Court have rightly granted a decree.

12. Now the point that would arise for my consideration in this second appeal is whether there is any substantial question of law to be determined by this Court?

13. **Point:-**There is no dispute with regard to relationship between the parties. There is also no dispute on the fact that plaintiff had ancestral properties in his native village Kadana Nagaram. It is further evident from Ex.A1 plaintiff in his own capacity and as guardian of D1 along with his brothers sold ancestral properties to one Amaranadhudu S/o. Velayudha Swamy Das for Rs.2,000/- on 12-02-1962. From the recitals of Ex.A1, it is clear that the said property

was sold for family needs. It is further evident from Ex.A2, plaintiff in his personal capacity and as guardian of D1 along with his mother and brothers sold some more lands to clear loan amount due to Sarvana Murugesu Modali. According to plaintiff, after discharging the debts, he purchased suit schedule property in the name of D1 with the remaining sale proceeds. It is evident from Exs.A1 & A2, a sum of Rs.4,000/- was realised in the year 1962 on account of sale of properties covered by these two documents. The sale deed in favour of D1 is of the year 1963 which is marked as Ex.A3 and from its recitals it is clear that the property covered by Ex.A3 was purchased for a consideration of Rs.600/- and the suit properties are the properties covered by Ex.A3. So the contention of plaintiff that the suit schedule properties purchased under Ex.A3, with the joint nucleus is convincingly proved through the oral evidence of P.Ws.1 to 5 and documents-Exs.A1 & A2. As against this, the defendants, except relying on the oral testimony, no cogent evidence is produced to rebut the evidence produced on behalf of plaintiff. Even the documents marked on behalf of defendants are the sale deed executed by D1 in favour of D4 i.e., appellant herein. Both trial Court and first appellate Court have thoroughly scanned evidence that is adduced on behalf of both parties and held that plaint schedule properties were purchased with the residue of sale consideration covered by Exs.A1 & A2, after discharging the family debts. On a scrutiny of the material on record, I do not find any wrong in the findings of the trial Court or first

appellate Court. Though as many as five grounds are urged as substantial questions of law, which are indicated above, all these grounds are with reference to appreciation of evidence by the trial Court and appellate Court. Now when the evidence on record has clinchingly established that suit schedule properties are purchased with the joint nucleus, the objection of appellants with regard to findings of the trial Court and first appellate Court cannot be accepted. As rightly pointed out by Advocate for plaintiff both trial Court and first appellate Court have elaborately dealt each and every aspect i.e., pointed out and answered them with reference to material available on record. On a scrutiny of the entire material, I have no hesitation in holding that trial Court and appellate Court have not committed any error in accepting the claim of the plaintiff and that there are no grounds to interfere with any of the findings of the Courts below. As rightly pointed out by Advocate for plaintiff, no question of law is involved much less any substantial question of law and as such the second appeal is devoid of merits.

14. For these reasons, appeal is dismissed with costs.

15. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:10.07.2015

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