

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.156 of 2006

JUDGMENT:

This appeal is preferred against the judgment dated 07.10.2005 in A.S.No.7 of 2003 on the file of the Senior Civil Judge, Sathupalli, whereunder judgment dated 18.04.2003 in O.S.No.118 of 2000 on the file of the Junior Civil Judge, Sathupalli, is confirmed.

2. Brief facts leading to this appeal are as follows:

Respondent herein, who is the sole plaintiff, filed the above referred O.S.No.118 of 2000 for permanent injunction restraining defendants, who are appellants herein, from interfering with peaceful possession and enjoyment of the suit schedule property, contending that she is daughter of late Mandapati Appi Reddy and late Mandapati Seetharavamma and the suit schedule property fell to Appi Reddy in the partition that took place about 20 years prior to filing of the suit. After the death of Appi Reddy, Seetharavamma succeeded to the suit schedule property and Seetharavamma executed a Will, bequeathing the suit schedule property to plaintiff and after death of Seetharavamma, she came into possession and enjoyment of the suit schedule property and she has been enjoying the same and as defendants interfered with the possession, she filed suit for injunction. Defendants, who are, son, wife and son of another son of Appi Reddy contended that they and other heirs of Appi Reddy are

entitled for share in the property left by Appi Reddy and when they proposed for a partition, all the sons and daughters of Appi Reddy agreed to leave the suit schedule property to Seetharavamma towards her maintenance during her life time out of love and affection and that the said proposal was only oral and there was no document and that Seetharavamma has no right to execute a Will and that plaintiff cannot claim absolute rights in the schedule property.

3. On these contentions and rival contentions, trial Court examined eight witnesses on plaintiff's side and marked five documents and examined three witnesses on behalf of defendants' side but no documents are marked. On a overall consideration of oral and documentary evidence, trial Court decreed the suit in favour of plaintiff, aggrieved by which, defendants preferred A.S.No.7 of 2003. Lower appellate Court on a reappraisal of both oral and documentary evidence, confirmed findings of the trial Court and dismissed the appeal. Aggrieved by which, present second appeal is preferred.

4. Heard both sides.

5. The main substantial question of law raised by the appellants is that a suit for injunction against the co-owners is not maintainable and that the testator has no right to execute a Will and the same is not binding on the defendants.

6. Now the point that would arise for my consideration

in this second appeal is:

Whether there is any substantial question of law as contended by the appellants, which require determination by this Court?

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POINT :

7. There is no dispute with regard to relationship between the parties. There is also no dispute with regard to identity of the property and the fact that suit schedule property fell to the share of late Appi Reddy in the family partition and that Appi Reddy died intestate. From the pleadings and evidence, it is clear that sons and daughters of late Appi Reddy agreed to give the schedule property to be enjoyed by their mother Seetharavamma during her life time for her maintenance and that she was in possession and enjoyment of the suit schedule property during her life time. Now the contention of the appellants is that the schedule property is the absolute property of Appi Reddy and as he died intestate, both Seetharavamma, daughters and sons of Seetharavamma are entitled for a share in the said property. Admittedly, no counter claim is made by defendants in the suit, claiming a share in the suit schedule property. It is also not in dispute that no separate suit is filed for partition of the suit schedule property by defendants or by other brothers challenging the Will. In a suit for injunction what is to be seen is the person who approached the Court was actually in possession or not of the disputed property as

on the date of filing of suit and whether the said person has got any legal right. These two are the main requirements in a injunction suit and from the evidence and material on record, it is clear that plaintiff has got legal right in the suit schedule property and she is in possession after the death of Seetharavamma and has been enjoying the schedule property. When possession is not disputed and the evidence on record would clinchingly show that property is under the peaceful possession and enjoyment of plaintiff, when she complained interference, there is nothing wrong in granting injunction against the defendants. Though defendants contended that they are co-owners of the property, they have not taken any steps for partition of the property or to declare them as co-owners of the property, particularly when plaintiff claimed absolute rights. Both trial Court and appellate Court have elaborately discussed oral and documentary evidence and came to a right conclusion that plaintiff is in possession and enjoyment of the suit schedule property. Now such concurrent findings cannot be interfered in a second appeal, particularly when the evidence produced by plaintiff is convincing and cogent. When the defendants failed to establish that they are co-owners of the suit schedule property, the contention that the injunction suit against a co-owner is not maintainable, cannot be sustained. Therefore, the question of law raised by the appellants cannot be

accepted.

8. For these reasons, I am of the view that there is absolutely no question of law involved in this second appeal leave alone substantial question of law. However, defendants i.e., appellants herein are at liberty to take appropriate legal steps if their claim is within the period of limitation and on such legal steps being taken, the Court should consider the contentions without being influenced by the observation and findings of this Court.

9. Accordingly, second appeal is dismissed. No costs.

10. Miscellaneous Petitions, if any, shall stand dismissed.

S. RAVI KUMAR, J

28th January 2015.

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