

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Appeal Suit No.559 of 1997

Date: 24-04-2015

Between:

Chinthalapalli Chinna Sayanna

.. Petitioner

AND

Chintalapalli Saya Reddy and another

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Appeal Suit No.559 of 1997

ORDER:

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This appeal is filed against the judgment and decree dated 28-01-1997 in O.S.No.21 of 1992 on the file of Subordinate Judge's Court, Nirmal, whereby and whereunder the Court below decreed the suit for partition filed by the respondents-plaintiffs holding that the plaintiffs are entitled to 2/3rd share in plaint A and B-schedule properties and the plaintiff No.1 and the defendant are entitled to half share each in the plaint C-schedule properties.

For the sake of convenience, the parties are referred to herein as they are arrayed before the trial Court.

2. The plaintiffs filed the suit for partition claiming that they are son and daughter of the defendant and are members of the joint family covered by

Mithakshara school of Hindu law. The defendant inherited the suit schedule properties in the division between him and his brothers. The plaintiffs and defendant are joint owners and possessors of immovable properties i.e. agricultural lands and houses, which are ancestral joint family properties of the parties. The defendant is Kartha of joint family, the second plaintiff was married about two years back and she is entitled to a share in the suit A and B-schedule properties as a son (daughter). The first plaintiff and the defendant are having equal shares in A and B schedule properties i.e. $\frac{1}{3}^{\text{rd}}$ share each and the first plaintiff and the defendant are having equal share in the suit C-schedule properties i.e. $\frac{1}{2}$ share each and due to some misunderstanding in the family, it became impossible for the parties to continue and enjoy the properties as co-owners and the plaintiffs demanded their share in the suit schedule properties, but the defendant refused to partition and give their share to the plaintiffs. Hence, the suit for partition and separate portion of their shares.

3. The defendant filed his written statement denying the relationship between him and the plaintiffs and stated that the plaintiffs are not entitled to any share in the plaint schedule properties. It is stated that the defendant is having his own joint family consisting of his wife by name Sathamma, his son by name C. Ashok Kumar and daughter by name Padma Rani and the suit is filed at the instance of defendant's brothers by name Chintapalli Pedda Sayanna and Chinthapalapalli Nadipi Sayana, who are defendants in O.S.No.75 of 1991 on the file of District Munsif Court, Nirmal, which was filed by the defendant herein against the said persons. The said brothers of the defendant got initiated the suit for pressuring the defendant to withdraw O.S.No.75 of 1991 filed by him against them. As such, the defendant sought for dismissal of the suit.

4. On the above pleadings, the trial Court framed the following issues for trial.

1. Whether the plaintiff Nos.1 and 2 are the children of the defendant and they are entitled for any share in the suit schedule properties?
2. Whether the plaintiffs are entitled to the decree as prayed for?
3. Whether the suit is under valued?
4. To what relief.

4. The trial Court, after analyzing the oral and documentary evidence i.e. PWs.1 to 4 and DWs.1 to 4 and Exs.A.1 to A.3 and Ex.B.1 adduced by either parties, decreed the suit in favour of the plaintiffs declaring the plaintiffs 1 and 2 to have $2/3^{\text{rd}}$ share in A and B schedule properties and $1/2$ share each in the plaintiff C-schedule properties. Aggrieved by the said decree and judgment, the present appeal has been filed by the defendant.

5. Learned counsel for the appellant-defendant submits that the respondents-plaintiffs have not examined their mother Gouramma to prove their paternity as the same is disputed by the appellant-defendant. He contends that the appellant has pleaded in the written statement that one Sathemma is his wife and through her his son Ashok Kumar and daughter Padma Rani were born, but no rejoinder was filed by the respondents-plaintiffs and they are also not made parties to the suit. As such, the suit is liable to be dismissed for non-joinder of necessary parties. He further contends that the Court below relied on Ex.A.1 and granted partition and Ex.A.1 is not admissible in evidence as the same is not registered a document though rights of the immovable property are declared in the same. He also submits that the said unregistered document is not admissible in evidence. In support of his contentions, he relied on **Easwari v. Parvathi and others**, **Ranga Reddy v. Sadhu Padamma and others** and **Bharatha Matha v. R. Vijaya Renganathan**.

6. On the other hand, learned counsel for the respondents-plaintiffs submits that the Court below relying on oral and documentary evidence adduced by the plaintiffs i.e. PWs.1 to 4 and Ex.A.1 to A.3 held that the plaintiffs have established the relationship between the plaintiffs and their mother with the defendant as their son and daughter. He further contends that PW.2 who is attesting witness of Ex.A.1 clearly stated that the defendant executed Ex.A.1 agreeing to give half share in the suit schedule properties to the plaintiffs and also admitted the relationship of the plaintiffs with the defendant. PW.3 also deposed that the plaintiffs are children of the defendant and PW.4 who is natural sister of the defendant also supported the case of the plaintiffs and their relationship with the defendant. Since the defendant himself admitted that the suit schedule property is ancestral property, the Court below on the evidence of the plaintiffs decreed the suit. He further contends that DW.3 clearly admitted that Sathemma is his second wife, as such, neither Sathemma nor her children

are entitled to share in ancestral property as held by the Apex Court in **Bharatha Matha v. R. Vijaya Renganathan** (3 supra), **Jinia Keotin and others v. Kumar Sitaram Manjhi and others** and **Mahesh Chand v. B. Janardhan Reddy and another**. He also contends that the law laid down in **Bharatha Matha v. R. Vijaya Renganathan** (3 supra) is holding the field though the said view is not accepted by the Supreme Court in **Revanasiddappa and another v. Mallikarjun and others** and referred the issue to the larger Bench. He further contends that as long as the decision in **Bharatha Matha v. R. Vijaya Renganathan** (3 supra) is not overruled, the same holds the field. He also placed reliance in **Singhai Ajit Kumar v. Ujayar Singh**.

7. In view of above pleadings and rival contentions of the parties, the points that arise for consideration in this appeal are, -

1. Whether the Court below has arrived at right conclusion in holding that the plaintiffs 1 and 2 are the children of the defendant basing on the evidence of the appellant and respondents?
2. Whether Sathemma and her children are entitled for a share in the suit schedule properties?
3. Whether the suit is liable to be dismissed for non-joinder of necessary parties?
4. Whether the daughters are entitled to equal share in the coparcenary property in view of Hindu Succession (Amendment) Act, 2005 after passing of preliminary decree?

Point No.1:

8. The plaintiff himself was examined as PW.1 and stated that Chinna Sayanna i.e. Saya Reddy is his father, Chinthapally Gangavva is his mother and he filed the suit for partition of joint family properties consisting of agricultural lands and houses situated at Madipally and Krishnaraopet villages and his maternal grandfather was one Sunkari Mallanna. He also spoke about relationship of the defendant stating that the defendant has two brothers and sisters. He stated that since 1974 he is residing in Chamanpally village with his maternal grandfather Sunkari Mallanna and that his father married another lady by name Sattamma in the year 1974 and due to some differences between them, they are residing at Chamanapally village and the relationship between his father

and mother were cordial till about 1974 and thereafter differences arose and that his father executed Ex.A.1 document agreeing to give half share in his properties to the plaintiffs. He also stated that Gangubai is described as wife of his father and the plaintiffs were shown as son and daughter and Ex.A.1 was signed in the presence of Komula Pothanna, Enugu Bhumanna and Surakanti Linganna. He also deposed that he studied up to 8th class and thereafter he appeared privately. He deposed that his father and grandfather used to bear the expenses for his education and he was also referred as Surakanti Sayanna @ Saya Reddy and his maternal grandfather's surname is Surakanti. As per Ex.A.2, which is Intermediate Certificate pertaining to himself, his name was shown as Ch. Saya Reddy s/o Sayanna and Ex.A.3-voters list relating to Chamanapalli village also shows the name of his father and husband of his mother is recorded as Sayanna. He also stated that though they were living separately, they used to go to their father whenever necessity arises. He also stated that the defendant attended the cradle ceremony of his sister's daughter and his junior mother also attended the said function. The defendant also attended the funerals of his maternal grandfather and grandmother. They also demanded the defendant for giving their share, but the same was refused by the defendant.

9. PW.2 who is attestor of Ex.A.1 deposed that he is resident of Chamanapally village and plaintiffs 1 and 2 are the son and daughter of the defendant and Gangubai, who is wife of the defendant. He deposed that the marriage of Gangubai with the defendant was performed during their childhood about 30 years back and they lived happily as husband and wife and during subsistence of the marriage between them in the year 1974, the defendant contacted second marriage with another lady. He further deposed that when the defendant married another lady, a panchayat was held wherein the defendant agreed to give half share to Gangubai and her children and PW.2 attested the agreement executed by the defendant himself and one Enugu Bhumanna and Eragatla Linganna also attested Ex.A.1 and that the contents of Ex.A.1 were read over to him to the defendant. He further stated that the defendant performed the marriage of the first plaintiff by attending all ceremonies at the time of marriage. He also deposed that the second plaintiff was given in marriage to the defendant's own sister's son. He further stated that the defendant himself

performed the marriage of the second plaintiff and due to some differences, the second plaintiff was divorced by her husband and the defendant performed her second marriage and that the defendant attended the obsequies ceremonies of his parents-in-laws.

10. Similarly, PW.3 also stated that the defendant's own brother by name Nadipi Sayanna married his sister and the defendant married his junior paternal uncle's daughter by name Gangubai. Nadipi Sayanna, the brother of the defendant gave divorce to his sister. He also stated that the marriage between Gangubai and the defendant is still subsisting and the plaintiffs are the issues of the defendant and Gangubai and the defendant and his wife Gangubai performed the marriage of the first plaintiff and the said Bheema Reddy is no other than the defendant's own sister's son and the said Bheema Reddy divorced the second plaintiff about 7 to 8 years back and the defendant and his wife again performed the second marriage of the second plaintiff. He also stated that since 20 years Gangubai, the wife of the defendant is residing at Chamanpally village in her parent's house and that due to some disputes that arose between Gangubai and the defendant, Gangubai is residing in her parents house. He further deposed that when the defendant contacted second marriage, Gangubai's father raised the dispute before the elders and the defendant agreed to give half share to Gangubai and her children and the defendant promised to execute the agreement.

11. Similarly, PW.4, who is none other than the elder sister of the defendant, deposed that Gangavva is the wife of the defendant and their marriage was performed during their childhood and during the wedlock of the defendant with Gangubai, the plaintiffs were born to them and she attended the cradle ceremonies of the plaintiffs in the capacity of their aunt. She further deposed that keshakhandana ceremonies of the plaintiffs were done at Medipally village before a Dargha. She further deposed that at the time of Keshakhandana ceremony, the plaintiffs placed on her lap and she spread her veil (Kongu) and his brother-China Sayanna (the defendant) gave her katnam and the defendant performed the marriages of the plaintiffs and that the first marriage of the second plaintiff was dissolved due to some disputes. She further deposed that herself, the defendant, and other relatives attended the second plaintiff while

she was in the hospital at the time of delivery. She further stated that about 20 years back, the defendant contacted second marriage and since then Gangubai is residing at her parents house along with the plaintiffs and during the said 20 years period, there was visiting terms between the plaintiffs and the defendant's family and PW.4 herself, the defendant attended the obsequies ceremonies of Gangubai's parents and that about one and half years back Gangubai attended keshakandanam ceremony of her second brother's grandson at Medipally villages and the plaintiffs also attended the said function.

12. The defendant himself examined as DW.1 and the defendant totally denied the relationship of the plaintiffs with him and denied about the joint family of the plaintiffs and the defendant. He stated that he got the suit schedule lands in the partition with his brothers about 30 years back and since the date of the plaint schedule lands, the H.No.1-154 fell to his share in the partition and the H.No.2-83 was constructed by him with his own earnings in the year 1979 and since 1972 he is working in APSEB department and one Sattamma is his legally wedded wife and he married her in the year 1974 and he begot a daughter and son through Sattamma. He further deposed that he filed a suit against his brothers on the file of District Munsif, Nirmal in O.S.No.75 of 1991 and his brothers insisted him to withdraw that suit and that when he refused to do so, they got filed this suit with the help of the plaintiffs and their mother alleging that they are his children. PW.4 proposed the marriage of her son with his daughter and he refused the said proposal and therefore, PW.4 developed grudge against him and Ex.B.1 is the voters list of Chamanapally village.

13. DW.2 deposed that himself and the defendant studied in the same school at Nirmal and stated that the defendant's marriage was performed in the year 1974 with one Sattayamma and that the defendant had not married any other woman except Sattyamma. DW.3, who is stated to be a cultivating tenant, stated that he married Sathemma about 5 or 6 years back, but he does not know about the defendant has any other wife. Dw.4 also deposed that the defendant and his brother partitioned their properties about 25 to 30 years back and the defendant's marriage was performed with Sattyamma and he does not know if the defendant had married any other woman other than Sattyamma.

14. PWs.2 to 4 supported the case of the plaintiffs that the plaintiffs are son

and daughter of the defendant through Gangubai, the mother of the plaintiffs. The averments in the plaint by the plaintiffs and the evidence of PW.1 supported the evidence of PWs.2 to 4 in that aspect. PW.2 who is the attester of Ex.A.1 also deposed that the defendant agreed to give half share in the properties to plaintiffs. PW.3 also categorically stated that the defendant admitted to give half share to the plaintiffs in the panchayat held after disputes arose after his second marriage with Sathemma in the year 1974. The evidence of PW.1 is also consistent with the evidence of PWs.2 to 4. In the cross-examination of PW.1, the defendant could not elicit anything to discredit the testimony of PW.1 except giving some suggestions. PW.2 also belonged to Chamanapalli village and is not a stranger to the parties, as such, there is nothing to disbelieve his evidence. Similarly, PW.3, who is also close relative to both parties and there is nothing to disbelieve his evidence. PW.4 who is own sister of the defendant also supported the case of the plaintiffs stating that the plaintiffs 1 and 2 are son and daughter of the defendant. The only suggestion given to her is that since the defendant refused to perform the marriage of his daughter with her (PW.4) son, PW.4 bore grudge against him (the defendant) and filed the case against him, which was categorically denied in her cross-examination. The evidence of DW.1 is of total denial except marking Ex.B.1, which is voters list and the case of the defendant is that in Ex.B.1, the husband of Gangubai is shown as Surakanti Mallanna, but the trial Court has found that since the plaintiffs and their mother were residing in the grandfather's village, their names were shown as Surakanti. Though in Ex.B.1, the surname of the defendant is mentioned as Surakanti, the fact remains that the plaintiffs and Gangubai are residing with Surakanti Mallanna, who is plaintiffs' maternal grandfather, as such the surname was recorded as Surakanti, but Ex.A.2, the Intermediate pass certificate of first plaintiff shows that the first plaintiff was described as Ch. Saya Reddy, S/o Saya Reddy. Similarly, the evidence of PW.3 was also not shaken and PW.4 also categorically stated in support of the plaintiffs' case. DW.2 admitted about Udiki type marriage of the defendant in their caste, but he does not appear to be resident of either Medipalli or Chemanapalli villages. In view of clear evidence of PWs.3 and 4, the evidence of DW.2 cannot be believed. DW.3 also clearly admitted that the defendant married Sathemma in Udiki form of marriage. Though he states that he is resident of Medipally village, he stated that he did

not know who performed the marriage of the plaintiffs, which goes to show that he is not planted witness, more so, he is a farm servant of the defendant and supported the case of the defendant and his evidence cannot be also believed in the light of the evidence of PWs.3 and 4, who are close relatives of the defendant and the plaintiffs and in view of Ex.A.1. He also categorically stated in his chief-examination that he do not know whether the defendant had married any other woman other than Sathemma. Though in the cross-examination he stated that his house is situated 5 to 6 houses from the house of the defendant, he contends that he has not much acquaintance with the family of the defendant prior to 1974, which goes to show that he is not aware about the marriage of the plaintiffs' mother with the defendant. The Court below appreciated the evidence of PWs.1 to 4 and Exs.A.1 to A.4 and the evidence of DWs.1 to 4 and Ex.B.1 in proper perspective and hence, I do not see any reason to interference with the findings of the Court below on the said issue, more so, ample evidence is adduced by the plaintiffs to prove their relationship with the defendant, as such, non-examination of plaintiffs' mother is not a ground to non-suit the plaintiffs. In **Ranga Reddy v. Sadhu Padamma and others** (2 supra) on which reliance is placed, it is held:

“.....Section 49 prohibits the Court to receive in evidence any document affecting immovable property which is not registered as required under Section 17 of the Act or any provisions of the Transfer of Property Act, 1882. The proviso to Section 49 contains three exceptions. They are-

- (1) an unregistered document affecting immovable property required to be registered under law may be received as evidence of a contract in a suit for specific performance;
- (2) an unregistered document affecting immovable property required to be registered under law may be received as evidence of part performance of a contract for the purpose of Section 53-A of the Transfer of Property Act; and
- (3) an unregistered document affecting immovable property required to be registered under law may be received as evidence of any collateral transaction not required to be affected by registered instrument....”

15. The facts in the above case are totally different since the Court below has relied on Ex.A.1 only for the purpose of admission of the defendant about relationship of the plaintiffs with the defendant and hence, the said decision has no relevance to the facts of the present case.

16. Similarly, in **Easwari v. Parvathi and others** (1 supra), wherein it is held

as follows:

“.....mere going through certain ceremonies with intention of marriage will not make the ceremonies as prescribed by law or approved by any established custom. The bare fact of a man and a woman living as husband and wife does not normally give them the status of husband and wife.....”

17. But, the facts in the above case are not similar and identical to that of the facts in the present case and the evidence in the present case is sufficient enough to prove the relationship of the plaintiffs with the defendant, and hence, the said decision has no relevance to the facts of the present case. Hence, this point is answered in favour of the defendants.

Point Nos.2 and 3:

18. The case of the defendant is that he married Sathemma in 1974 and the children through her constitute joint family property, but PWs.2 to 4 deposed that the defendant married Sathemma in the year 1974 and DW.3 is also admitted that the defendant married Sathemma in Udiki form of marriage and DW.4 has not stated whether the defendant married any other person and is not closely acquainted to the family affairs of the defendant though he resides 5 to 6 houses after the house of the defendant. The evidence of PWs.1 to 4 coupled with the evidence of DWs.1 to 4 shows that the defendant married Sathemma only in the year 1974, as such, the second marriage is void as per Section 5 of the Hindu Marriage Act and the children born through the void marriage are only entitled for share in the self-acquired property as per Section 16 of the Hindu Marriage Act. The Apex Court in **Revanasiddappa and another v. Mallikarjun and others** (8 supra), held as follows:

“.....On a careful reading of Section 16 (3) of the Act we are of the view that the amended Section postulates that such children would not be entitled to any rights in the property of any person who is not his parent if he was not entitled to them, by virtue of his illegitimacy, before the passing of the amendment. However, the said prohibition does not apply to the property of his parents. Clauses (1) and (2) of Section 16 expressly declare that such children shall be legitimate. If they have been declared legitimate, then they cannot be discriminated against and they will be at par with other legitimate children, and be entitled to all the rights in the property of their parents, both

self-acquired and ancestral. The prohibition contained in Section 16(3) will apply to such children with respect to property of any person other than their parents.....”

Even as per the defendant, the suit schedule property is the ancestral property, as such, the children of Sathemma are not entitled for any share. No evidence is led to show that the suit schedule property is his self-acquired property. The finding of the trial Court that the suit schedule property is ancestral property is also not seriously canvassed in the appeal. Though the Apex Court has referred the issue to Larger Bench, the law laid down by the Apex Court in **Bharatha Matha v. R. Vijaya Renganathan** (3 supra) and **Neelamma v. Sarojamma** ((2006) 9 SCC 612) and **Jinia Keotin and others v. Kumar Sitaram Manjhi and others** (4 supra) holds the field as on today. In view of the same, when the children through void marriage are not entitled any share in ancestral property, question of dismissal of suit for not arraying them as parties to the suit on the ground of non-joinder of necessary party does not arise. Accordingly, these points are answered in favour of the respondents and against the appellant.

Point No.4:

In view of Hindu Succession (Amendment) Act, 2005 coming into force on September 2005, daughters have also equal rights with that of a son in ancestral property. In view of the principle of law laid down by Apex Court in **Ganduri Koteshwaramma v. Chakiri Yanadi**, the preliminary decree can be amended as per Hindu Succession (Amendment) Act, 2005 on application. Both the counsel have not disputed the same. Since the law is well settled about the rights of daughters in ancestral property by way of Hindu Succession (Amendment) Act, 2005, instead of driving the parties to trial court for modification of preliminary decree, the same can be modified to the extent of entitling the second plaintiff equal rights in entire suit schedule properties along with the first plaintiff and the defendant and accordingly, the plaintiffs and the defendant are entitled to 1/3rd share each in entire suit schedule property.

Accordingly, the appeal is disposed of modifying the judgment and decree dated 28-01-1997 in O.S.No.21 of 1992 to the extent indicated above, while the

said judgment and decree in respect of other aspects remained unaltered. Both parties shall bear their own costs.

A. RAJASHEKER REDDY, J

Date: 24-04-2015

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