

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL Nos.684 OF 2009

&

890 OF 2009

Dated 19-1-2015

SECOND APPEAL No.684 OF 2009:

Between:

_____ Komara Padmavathamma.

_____...Appellant.

And:

_____ K.Srinivasulu and others.

_____...Respondents.

SECOND APPEAL No.890 OF 2009:

Between:

_____ Komara Padmavathamma.

_____...Appellant.

And:

_____ K.Srinivasulu and another.

_____...Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL Nos.684 OF 2009

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COMMON JUDGMENT:

These two appeals arise out of common judgment dated 20-8-2007 in A.S.No.172 of 2005 which is preferred against decree in O.S.No.157 of 1999 and A.S.No.173 of 2005 is preferred against decree in O.S.No.126 of 1996. Both A.S.No.172 of 2005 and A.S.No.173 of 2005 are disposed of by a common judgment.

One Komara Srinivasulu filed O.S.No.102 of 1999 against three defendants initially and after the death of first defendant-Venkata Subbaiah, D.4 to D.7 were added to the said suit and the relief in the suit is for partition of the

plaint schedule property which consists of 5 items. O.S.No.157 of 1999 is also filed by same Srinivasulu against seven defendants initially and on the death of D.1-Venkata Subbaiah, D.8 to D.11 were added and this suit is also filed for partition of properties and two items are only involved in this suit which were already there in the earlier suit O.S.No.102 of 1999. First item in O.S.No.157 of 1999 is second item in O.S.No.102 of 1999 and second item in O.S.No.157 of 1999 is 3rd item in O.S.No.102 of 1999. O.S.No.126 of 1996 is filed by Venkata Subbaiah which is also for partition in respect of one item of the property which is also covered by suit O.S.No.102 of 1999. The schedule property in O.S.No.126 of 1996 corresponds to item No.4 of O.S.No.102 of 1999. This suit is filed against two persons i.e., plaintiff in other two suits and one K.Venkatarao. One Komara Venkata Subbaiah has got 5 sons and two daughters. Sons are Komara Srinivasulu, Komara Venkatarao, Komara Venkata Ratnam, Komara Venkateswarulu and Chalapathi.

Appellants in both the appeals is daughter-in-law of said Venkata Subbaiah i.e., wife of one of the sons and she got impleaded herself as legal heir of Venkata Subbaiah in one suit i.e., OS.No.126 of 1996 which was filed by Venkata Subbaiah. Trial court through a common judgment dismissed the suit filed by Venkata Subbaiah and decreed the suits filed by Srinivasulu i.e., O.S. Nos.102 of 1999 and 157 of 1999 directing partition of the suit properties covered by these two suits. Aggrieved by the dismissal of suit filed by Venkata Subbaiah and partition ordered in O.S.No.157 of 1999, appeals were filed. But there was no appeal challenging the decree in O.S.No.102 of 1999 which was a comprehensive suit wherein the items covered by the other two suits were also included. As already referred above, two items in O.S.No.102 of 1999 are covered by O.S.No.157 of 1999

and one item is covered by O.S.No.126 of 1996 which means from out of five items for which partition is claimed in O.S.No.102 of 1999, three items are covered by the other suits.

Common trial was conducted for all the three suits and one of the sons i.e., plaintiff in comprehensive suit in O.S.No.102 of 1999 and the other suit O.S.No.157 of 1999 is examined as P.W.1. Appellant herein who is impleaded as second plaintiff in the suit filed by Venkata Subbaiah examined herself as D.W.1, D.6 in O.S.No.102 of 1999 and D.5 in O.S.No.157 of 1999 is examined as P.W.2 whereas second plaintiff in O.S.No.126 of 1996 is examined as D.W.1 and one of the attestors of Ex.B.1 will is examined as D.W.2 and scribe of will is examined as D.W.3 and on an overall consideration of oral and documentary evidence, trial court disbelieved the will relied on by appellant herein and dismissed the suit filed by Venakta Subbaiah and decreed the suit filed by Srinivasulu. The claim of appellant is based on the will and she did not come on record as a legatee of Venkata Subbaiah in O.S.No.102 of 1999 though he was D.1 in the said suit. So also she did not implead herself as party to O.S.No.157 of 1999 wherein Venkata Subbaiah was referred as D.1. Though she challenged O.S. No.157 of 1999, she is not a party to the said suit, but as the judgment was common, she challenged that judgment ignoring the comprehensive suit in which evidence is recorded on the request of both parties.

The substantial question of law as referred in the grounds is only in respect of will which is marked as Ex.B.1. As many as 17 grounds are urged as grounds of substantial question of law and all these 17 grounds are only in respect of will.

Now the point that would arise for my consideration in these two appeals is:

Whether there is any substantial question of law that

has to be determined by this court, particularly in respect of will dated 22-7-1998?

POINT:

Plaintiff in O.S.No.126 of 1996 i.e., Venkata Subbaiah filed suit against plaintiff in other two suits for partition. As already referred above, the other suits are also filed for partition of the properties which are included in O.S.No.102 of 1999 whereas the other two suits are in respect of only some of the items. On the request of both parties, evidence is recorded in O.S.No.102 of 1999 and common trial is conducted for all these three suits. It is also not in dispute that late Venkata Subbaiah was working as police constable and as he could not meet the family expenses, his son Srinivasulu i.e., plaintiff in other two suits i.e., O.S.No.102 of 1999 and O.S.No.157 of 1999 along with Venkata Rao, Venkataratnam and their mother started business of selling tiffins like idly and dosa etc., and he improved the said business and in that connection, they borrowed some amount from third parties and purchased properties in the name of Srinivasulu, his mother i.e., Venkata Subbamma and other brothers. It is also not in dispute that during pendency of the suit, Venkata Ratnam and his wife committed suicide and they have no issues. Venkata Subbamma died in the year 1992 whereas Venkata Subbaiah died in November, 1999. According to appellant, Venkata Subbaiah executed will on 22-7-1998. According to appellant, this Srinivasulu was residing in item 4 of the schedule mentioned property and later, he vacated the same by taking a sum of Rs.35,000/- towards his share to commence business and as such, he has no right in the properties left by Venkata Subbaiah.

To prove the will, one of the attestors is examined as D.W.2 and scribe is examined as D.W.3. But on a scrutiny of the evidence, trial court held that will is not duly proved as the beneficiary of the will failed to remove

suspicious circumstances. Learned trial judge elaborately discussed evidence of D.Ws.2 and 3 who are concerned with Ex.B.1 will. In fact, each and every sentence of deposition of these two witnesses was meticulously examined and on such meticulous examination, a finding is given that will is doubtful. Here the appellant has taken steps only to come on record in the suit filed by Venkata Subbaiah as plaintiff but she did not make any effort to come on record in the other suits, particularly, when joint trial is conducted and all the properties were subject matter in the comprehensive suit O.S.No.102 of 1999. As rightly pointed out by advocate for respondent, the present two appeals without challenging the decree in the main comprehensive suit cannot be entertained in view of the fact that O.S.No.102 of 1999 is the comprehensive suit. The contention raised on behalf of appellants in the forum of grounds in respect of Ex.B.1 will are not at all tenable in view of the suspicious circumstances pointed out by trial court while discussing evidence of attesor and scribe of Ex.B.1 document.

On a thorough scrutiny of the material, I have no hesitation in holding that both trial court and appellate court have rightly appreciated evidence on record and came to a right conclusion and there is no question of law involved in these two appeals and the grounds urged are only with reference to factual aspects.

As seen from the material, both trial court and appellate court rightly discarded the will and the findings of both the courts are based on sound reasoning and there are absolutely no grounds to interfere with the same.

For these reasons, both the appeals are liable to be dismissed as devoid of merits.

Accordingly, both the Second Appeals are dismissed with costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand

dismissed.

JUSTICE S.RAVI

KUMAR

Dated 19-1-2015

Dvs

HONOURABLE SRI JUSTICE S.RAVI

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