

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CCCA No.45 of 1998

JUDGMENT:

The plaintiff and defendant No.4 who were defeated in the Court below preferred the instant appeal aggrieved by the judgment dated 11.12.1997 in O.S.No.192 of 1992 passed by VII Additional Judge, City Civil Court, Hyderabad whereby and whereunder learned Judge dismissed the plaintiff's suit for partition and permanent injunction.

2) Brief facts shorn of unnecessary details are thus:

a) K.Venkaiah Naidu through his first wife—Radha Bai begot Dayakar Babu Naidu who is the husband of defendant No.1. After the death of his first wife, Venkaiah Naidu married Navaneethamma and through her begot four sons—1. K.V.Ramachander Naidu, 2. K.V.Satyanarayana, 3. K.V.Srinivas—plaintiff and 4. K.Jayram Naidu—defendant No.4.

b) While so, plaintiff's case is that his father was having Golden Company Cycle Shop at Gowliguda, Hyderabad and after his death in or about 1930, his step brother—Dayakar Babu Naidu being the eldest son of Venkaiah Naidu took charge and maintaining the family business. He purchased the suit house bearing No.4-5-644 situated at Kutbiguda, Hyderabad out of the earnings from the family business and got registered it in his name. He had

no sources of income except the cycle shop business left by his father. Dayakar Babu Naidu died about 40 years back and after his death Ramachander Naidu took charge of the family affairs. The plaintiff was a minor by then. Ramachander Naidu mismanaged the property as well as family business left by his father and incurred heavy debts which were adversely affected the interest of the minors. Besides the suit house bearing No.4-5-644 situated at Kutbiguda purchased by Dayakar Babu Naidu, the plaintiff's family originally had another house bearing No.713 in Sultan Bazar purchased by their father. Ramachander Naidu due to his mismanagement mortgaged the house bearing No.713 at Sultan Bazar and could not redeem and ultimately the said house was lost to the mortgagee. Before that the entire family was shifted to the suit house bearing No.4-5-644 at Kutbiguda. At the instance of elders Ramachander Naidu got repented and in order to clear off the existing debts $\frac{3}{4}$ th of the suit house bearing No.4-5-644 was sold out and the remaining portion was used for accommodation of the family members. Ramachander Naidu out of repentance declared that he was relinquishing the entire share in the family property.

c) The further case of the plaintiff is that defendant No.1 who is his sister-in-law, started quarrelling with defendant No.4 and having disgusted defendant No.4 shifted his family to Nimboliadda, Hyderabad. Further,

defendant No.1 did not quarrel much with the plaintiff because one of her two sisters namely Pushpalatha was given in marriage to the plaintiff. Hence plaintiff continued to reside in the suit house. Defendant No.1 used to manage the suit property and for repairs etc. plaintiff was also contributing his share. In the month of September, 1991 defendant No.1 directed the plaintiff to go away from the suit house like defendant No.4 and thereby quarrels took place in the family. Defendant No.1 ultimately declared that she is the absolute owner of the suit house and plaintiff and defendant No.4 have no right or interest therein. Plaintiff came to know that defendants 1 to 3 were making efforts to sell away the suit house behind the back of plaintiff and defendant No.4. Defendant No.2 is the son and defendant No.3 is the wife of deceased son of defendant No.1 viz. Sudhakar Naidu. Plaintiff and defendant No.4 have $\frac{1}{3}^{\text{rd}}$ share each along with defendant No.1 and hence suit for partition of the family house and for allotment of $\frac{1}{3}^{\text{rd}}$ share.

d) As per defendant No.1's written statement, her mother-in-law Radha Bai died two years after her marriage and father-in-law died three years prior to her marriage; she begot two sons during her wedlock. She stated that all the family members were staying in the house bearing No.713 situated in Sultan Bazar, Hyderabad purchased by her father-in-law and after his death her husband was looking after the business and

also joint family affairs. She stated that income from the cycle shop was just sufficient to maintain the entire family hence, herself and her husband struggled a lot to bring up the step brothers of her husband. She also stated that at the time of marriage her parents gave sufficient gold jewellery as her Stridhana and after marriage her mother-in-law—Radha Bai also gave her gold jewellery. After the death of Radha Bai, her gold jewellery was also given to her. As the existing old house bearing No.713 became dilapidated and insufficient for accommodation of all the family members, at her request, her husband sold some jewellery and purchased the suit building bearing No.4-5-644 at Kutbiguda for Rs.20,000/-. After purchasing the suit house all the family members shifted there in 1944 and stayed there for one year and during the said period the old house bearing No.713 was reconstructed and thereafter, again shifted to the old house and the suit house was let out to rents and out of the rents, her husband was meeting the expenses of the family.

e) The further case of defendant No.1 is that her husband expired in July, 1946 and thereafter Ramachander Naidu who is elder step brother-in-law, took charge of the family affairs including cycle shop business. He mismanaged the affairs of the family and started taking huge loans. He took all the family documents and papers with regard to both the houses bearing No.713 at Sultan Bazar and 4-5-644 at

Kutbiguda. He could not redeem the mortgage and ultimately the house bearing No.713 in Sultan Bazar was lost to the mortgagee. The debts and liabilities were still there and hence at the advice of elders and well-wishers Ramachander Naidu and family members decided to sell a portion of the suit house bearing No.4-5-644 at Kutbiguda to clear off the debts incurred by him. Accordingly a part of the suit house was sold and remaining 1/3rd portion was used for family occupation. Ramachander Naidu repented and realized that he could not protect the interest of the family members and at the advice of the elders executed relinquishment deed dated 12.09.1951 with regard to the suit house bearing No.4-5-644 in favour of defendant No.2 and Sudhakar—husband of defendant No.3 who were minors keeping the first defendant as guardian. The said relinquishment deed was executed by Ramachander Naidu and his brothers. In view of the said deed plaintiff and defendant No.4 have no right or title in the suit house. All the brothers-in-law of defendant No.1 were educated, grownup, married and settled in their life and stayed with the first defendant for some time and later Ramachander Naidu, K.V.Satyanarayana and defendant No.4 left from the Kutbiguda house and leading their lives independently. Ramachander Naidu died on 01.02.1973 and K.V.Satyanarayana died on 13.08.1991. The plaintiff was staying in Kutbiguda house along with defendant No.1 as he married one of the sisters of first defendant. Plaintiff

was working as Labour Welfare Officer and accumulated huge properties. First defendant got two sisters namely Premlatha working as teacher and Pushpalatha who was given in marriage to plaintiff and Premlatha being unmarried living along with first defendant and paying Rs.350/- per month towards medical expenses of first defendant. Plaintiff out of evil desire and greediness tried to snatch away the house in his occupation. The plaintiff and defendant No.4 have no right or title in the suit house in view of relinquishment deed dated 12.09.1951 executed by all the brothers. She prayed to dismiss the suit.

f) Defendants 2 and 3 filed a memo adopting the written statement of defendant No.1.

g) Defendant No.4 filed a separate written statement contending that it was not in his knowledge about the mismanagement of K.Ramachander Naidu selling away of property to discharge the debts and also mortgage of house property bearing No.713 at Sultan Bazar and the allegation that three portions of the suit house was sold is incorrect and house sold by Ramachander Naidu was of a different municipal number from the suit house. He thus prayed to decree the suit and allot $\frac{1}{3}$ rd share to him.

h) Basing on the above pleadings, the trial Court framed the following issues:

1) *Whether the suit property is joint family*

property and liable for partition?

- 2) Whether the plaintiff is entitled for the relief of partition and separate possession of his share in respect of suit property as prayed for?*
- 3) Whether the plaintiff is entitled for the relief of perpetual injunction as prayed for?*
- 4) Whether the husband of first defendant is absolute owner of the suit property and the suit house cannot be partitioned as contended by D1?*
- 5) To what relief?*

3) Perusal of the judgment shows the trial Court decided issues 1 and 4 together and held that the suit schedule house is the joint family property but not the absolute property of first defendant. So far as issue No.2 is concerned, referring Ex.B1—relinquishment deed wherein the plaintiff and defendant No.4 were parties, observed that plaintiff was a major but not minor as contended by him by the date of Ex.B1 and therefore, having executed relinquishment deed he cannot claim any share in the suit property. The trial Court alternatively observed even assuming that plaintiff was a minor by the date of Ex.B1 but having known about execution of Ex.B1, he did not question the same within three years after attaining majority and further, himself and his wife resided in the suit property on the permission of defendant No.1 and he never claimed that he was residing in the suit property on his own right and thus the failure on the part of the plaintiff in not questioning the relinquishment deed within three

years after attaining majority is fatal to his claim in the suit.

a) Sofaras defendant No.4 is concerned, the trial Court observed that even as per Ex.B1 he was minor by then but like plaintiff he too did not question the relinquishment deed soon after he attained majority. As per his own admission, after his marriage in 1974 some quarrels occurred between his wife and defendant No.1 and defendant No.1 asked them to vacate the house and when he asked about his share defendant No.1 told that he has no share and hence ever since 1974 defendant No.4 was residing separately but he never questioned validity of Ex.B1 and therefore, plaintiff and defendant No.4 shall be deemed acquiesced their right under Ex.B1 —relinquishment deed. Sofaras defendant No.4 is concerned, his long dispossession since 1974 onwards showed that the possession of the suit property by defendants 1 to 3 became adverse to defendant No.4 and they perfected title in the suit property by ouster by adverse possession. Accordingly, the trial Court dismissed the suit.

4) Hence, the appeal by the plaintiff and since defendant No.4 supported the plaintiff in the suit, he too joined as second appellant in the appeal.

5) It should be noted that within short time after filing the appeal, the first appellant/plaintiff filed C.M.P.No.17992 of 1999 under Section 151 CPC

declaring that he was withdrawing the appeal to the extent of his share in the suit property in favour of respondent No.1 viz. Smt. Padma Bai. As per docket order the said petition was allowed on 18.01.2000 and CCCA was dismissed as far as appellant No.1 is concerned. However, appellant No.2/defendant No.4 continued the appeal.

a) While so, appeal notices were served on respondent No.2 on 12.05.1998 but the notices of respondent No.1 returned as absent and respondent No.3 unserved. It appears the appellant has not paid Batta for serving notice again on respondents 1 and 3, the Court by its order dated 27.04.2007 directed that matter be posted on 08.06.2007 for compliance of the office objection, failing which appeal should be dismissed insofar as that objection is concerned. It appears that Batta was not paid for respondents 1 and 3 and ultimately the appeal was dismissed as far as respondents 1 and 3 are concerned.

b) While so, pending appeal the 2nd respondent/2nd defendant—K.Prabhakar Naidu died and as per orders dated 24.02.2002 of Registrar (Enquiries) the LRs. of 2nd respondent were brought on record as respondents 4 to 7.

6) The parties in the appeal are referred as they were arrayed in the trial Court.

7) Heard arguments of Sri Md. Yousufuddin, learned counsel for appellant No.2/defendant No.4 and Sri Bankatlal Mandhani, learned counsel for respondents 4 to 7.

8) Challenging the judgment, learned counsel for appellant No.2/defendant No.4 argued trial Court committed grave error in holding that defendant No.2 has not taken any action against Ex.B1—relinquishment deed within three years after attaining majority and thereby he is not entitled to question Ex.B1. He vehemently argued that defendant No.4 was not aware of Ex.B1 as defendant No.1 kept all the family documents with her and he came to know about Ex.B1 only during trial and therefore, his taking action against Ex.B1 within three years after attaining majority does not arise.

a) Alternatively he argued that since the trial Court categorically held that suit property is a joint family property but not the absolute property of defendant No.1, in the matter of inheritance of the joint family property there can be no limitation and therefore, 1/3rd right of appellant No.2/defendant No.4 in the suit property is concerned, not barred by limitation. In this context he relied upon the following judgments.

1. Mohinder Singh v. Kashmira Singh^[1]

2. Chhote Khan v. Mal Khan^[2]

3. *Susil Bose v. Sefali Bose*^[3]

9a) Per contra, while questioning maintainability of appeal, learned counsel for respondents 4 to 7 firstly argued that in this appeal the appellants failed to take steps against respondents 1 and 3 and therefore, appeal is dismissed as abated against them and hence the appeal is not maintainable.

b) Secondly, he argued that appellant No.1/plaintiff has withdrawn the appeal as per C.M.P.No.17992 of 1999 and so appeal in respect of appellant No.1 was dismissed and appellant No.2/defendant No.4 who prosecutes the appeal on the same cause of action cannot maintain the appeal without impleading the first appellant as one of the respondents. Hence, the appeal is not maintainable on this count also. In this context he relied upon the decision of this Court reported in ***Arigela Laxmi v. Boodireddy Chandraiah***^[4].

c) Thirdly, learned counsel argued that appellant No.2 had full knowledge about the execution of Ex.B1—relinquishment deed and still he failed to question the same within three years after attaining majority and therefore, the trial Court rightly held that his right is extinguished in view of acquiescence and since he left the house in 1974 itself due to quarrels with defendant No.1, the defendants 1 to 3 obtained the property by

adverse possession also. He contended that trial Court rightly negated the claim of both the appellants and appeal at the instance of appellant No.2/defendant No.4 is not maintainable and on these arguments sought for dismissal of appeal.

10) In the light of above rival arguments, the point for determination is:

“Whether there are merits in the appeal to allow?”

11) **POINT**: As stated supra, the appellant No.1/plaintiff has withdrawn the appeal to the extent of his share in the suit property and so we are not concerned about with him but the right of appellant No.2/defendant No.4 only.

a) One of the contentions of learned counsel for respondents 4 to 7 is that the pleadings and cause of action for plaintiff and defendant No.4 who are the appellants herein are one and the same and when appellant No.1/plaintiff withdrew the appeal, the judgment of the trial Court confirmed as against him and as such appellant No.2 who prosecutes this appeal on the same cause of action cannot maintain the appeal as there would be likelihood of conflicting judgments in respect of two appellants who fought on the same cause of action and therefore, appellant No.2/defendant No.4 ought to have added appellant No.1/plaintiff as one of the respondents but he failed to do so and hence this appeal is not maintainable at his instance.

b) I am afraid this argument is not correct. It is true that the case of plaintiff and defendant No.4 is one and the same. They claimed the suit property as joint family property and they also claimed as if Ex.B1—relinquishment deed not binding on them and they are entitled to 1/3rd share each along with defendants 1 to 3. Be that it may, the trial Court gave a finding that the suit property is a joint family property and further, Ex.B1 is concerned, the plaintiff signed on it as a major and hence he was bound by it and even assuming he was not a major by that time still as he has not questioned the same within three years after attaining majority his right was extinguished. So also defendant No.4 who was a minor by the date of Ex.B1 did not take any action after attaining majority. So, in this appeal the cause of action for both the appellants is no doubt one and the same. It is also true that pending appeal appellant No.1/plaintiff withdrew the appeal. Merely because appellant No.1 ran out of race, it cannot be said that appellant No.2 who fought on the same cause of action cannot continue the battle. It must not be forgotten that in C.M.P.No.17992 of 1999, the appellant No.1/plaintiff clearly mentioned that he was withdrawing the appeal to the extent of his share in the suit property in favour of respondent No.1/defendant No.1 for the reason that respondent No.1 became an aged lady and she was none other than his wife's elder sister and her health was deteriorating day by day and she was

undergoing mental worry with the feeling that he by instituting the appeal taking vengeance against her. Whatever be the cause shown by him, appellant No.1/plaintiff while withdrawing the appeal made it clear that he was withdrawing the appeal to the extent of his share only. Consequently, this Court as per the order dated 18.01.2000 dismissed CCCA insofar as appellant No.1 is concerned. Such dismissal, in my considered view, will not have any impact on the right of other appellant to continue the appeal without the necessity of showing appellant No.1 as respondent. The cited decision is on different footing.

c) In ***Arigela Laxmi***'s case (4 supra) the plaintiffs filed the suit for declaration of title and perpetual injunction in respect of landed property basing on common ownership and possession of the property. The said suit was dismissed and during the appeal one of the plaintiffs died but his legal representatives were not brought on record. In that context, this Court relying upon several Supreme Court decisions held that appeal at the instance of surviving appellant is not maintainable since the interests of surviving appellants and deceased appellant were joint and indivisible and in the event of success in the appeal there would be two inconsistent and contradictory decrees. In that case, the judgment of the Court below became final against the deceased appellant by operation of law. So, it was held unless his legal representatives

were brought on record and fought against that judgment in the appeal along with other appellants there would be a chance of conflicting judgments in the same case qua surviving appellants. However, in the instant case, the appeal insofar as appellant No.1/plaintiff is concerned was not dismissed by operation of law but by reason of his withdrawal. Such individual and independent action on the part of appellant No.1 will not affect the rights of others though all of them fought on the same cause of action. Merely because appellant No.2/defendant No.4 has not shown as respondent that cannot be treated as a folly.

12) Now, coming to the contention of appellant No.2/defendant No.4, it is argued that since the property is joint family property and he has 1/3rd share and by the time of Ex.B1 he was a minor, therefore the said relinquishment deed will not affect his right and since he was not aware of existence of Ex.B1 till filing of suit, the question of his taking action against Ex.B1 does not arise. Alternatively, even assuming that he was aware of Ex.B1 there cannot be any limitation against inheritance.

13) It is true that the trial Court held suit property is a joint family property and neither party questioned this finding and hence it attained finality. It is true that in the cited decisions (1 to 3 supra) it was held that as far as inheritance is concerned, there is no limitation. However, in the instant case, in between the factum of joint family property and the right of inheritance of appellant No.2,

there interdicts Ex.B1—relinquishment deed. Had there been no relinquishment deed his right to seek for partition in respect of joint family property could have been decided on a different footing without the necessity of referring the law of limitation. However, admittedly there exists Ex.B1—relinquishment deed said to be executed by his elder brother—K.V.Ramachander on his behalf and on behalf of appellant No.2 being minor and also by other two brothers viz. K.V.Satyanarayan and K.Srinivas/plaintiff. So, necessarily it has to be verified whether appellant No.2 had no knowledge about Ex.B1 till filing of the suit. A perusal of evidence of DW2 would show that in the cross-examination he admitted as follows:

“It is true that Ex.B1 was executed by my elder brother—K.Ramachander, K.Satyanaryan and K.Srinivas/plaintiff and I under the guardianship of my real brother and elder brother—K.Ramachander executed relinquishment deed—Ex.B1 on 12.09.1951.”

a) Thus, he admitted about execution of Ex.B1 by himself and his brothers. He did not state in the cross-examination that he was not aware of execution of Ex.B1 or his coming to know about its existence only after filing the suit. Therefore, it is evident that he had full knowledge about the execution of Ex.B1 long prior to filing of the suit. It was his case that he was residing in the house till 1974 and after his marriage in 1974 there arose quarrels

between his wife and defendant No.1 and defendant No.1 asked them to go out of the suit house. If really appellant No.2 did not know about the existence of Ex.B1, certainly he would have agitated for his share in the suit property claiming it as a joint family property but he would not have left the house meekly. This indicates that he was conscious of execution of Ex.B1—relinquishment deed in favour of sons of defendant No.1. Further, when tax receipts under Exs.B3 to B13 were being obtained in the names of Prabhakar and Sudhakar—sons of defendant No.1, the appellants 1 and 2 (plaintiff and defendant No.4) would not have remained as mute spectators had they not knew about Ex.B1. This conduct also shows that they are aware of Ex.B1. So, appellant No.2/defendant No.4 is concerned he should have taken action against B1 within three years after his attaining majority or atleast within a reasonable time after 1974 when he was asked to go away from the house. However, appellant No.2 has not taken any action but he only supported the plaintiff when he filed the suit. So, the trial Court rightly held that the plaintiff and defendant No.4 acquiesced by long silence without questioning Ex.B1 even after filing the suit. Hence the appeal is not maintainable in my view. This appeal is not maintainable also for the reason though the appeal was dismissed against respondents 1 and 3 for default, no steps were taken subsequently. Hence, the appeal is not maintainable against other respondent No.2. Accordingly I do not find any merits in the contention of

appellant No.2/defendant No.4.

14) In the result, this CCCA is dismissed but no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.10.2015

Murthy

[\[1\]](#) AIR 1985 Punjab and Haryana 215

[\[2\]](#) AIR 1954 SC 575

[\[3\]](#) AIR 1981 NOC 36 (Cal.)

[\[4\]](#) 2003 (2) ALD 530