

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.71 of 2014
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JUDGMENT:

This is an appeal by the unsuccessful defendant under Section 100 of the Code of Civil Procedure, 1908 assailing the decree and judgment dated 22.10.2013 of the learned I Additional District Judge, Warangal passed in AS.No.76 of 2009. The learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 01.06.2009 of the learned Senior Civil Judge, Jangaon passed in OS.No.17 of 2007 filed for partition of the plaint schedule property.

2. I have heard the submissions of the learned counsel for the appellant/defendant ('the defendant' for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The learned counsel for the defendant would contend as follows:

The Courts below had failed to consider the oral and documentary evidence in proper perspective. The Courts below ought to have held that there is a prior partition between the plaintiff and the defendant on 09.06.1992 and that the property covered by exhibit A2 fell to the share of the defendant in the said partition and that, thereafter the property was mutated in the name of the defendant. The defendant is enjoying the property exclusively since a long time. After the defendant and his son brought a suit for perpetual injunction, the plaintiff had brought the instant suit as an after thought for partition to deprive the defendant of his valuable rights in the plaint schedule property. The evidence on the side of the defendant including exhibits B2 and B3 amply established that the defendant is exclusively entitled to the plaint schedule property. The plaintiff who was allotted land to an extent of Ac.7.27 guntas in the partition had sold away his properties. Since the date of

partition, the defendant is exclusively enjoying the plaint schedule property.

3.1 He had further contended that the following substantial questions of law are involved and, therefore, the appeal deserves admission and disposal on merits.

- 1. Whether the burden lies on the plaintiff to prove that under what circumstances, plaintiff and defendant have purchased the property as co-owners and got it registered, even after partition of their joint family properties?**
- 2. Whether a suit for partition of property is liable to be dismissed on the failure of the plaintiff to prove that he has capacity to purchase the property, and purchased the same along with defendant as a co-owner?**
- 3. Whether the failure of the courts below to draw a presumption for exhibit B1 in favour of the defendant under Section 6 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 against the plaintiff in the absence of contra to entries, is perverse?**
- 4. Whether a written partition deed is necessary to prove a partition in between family members of a joint hindu family?**

[Reproduced verbatim]

4. On the other hand, the learned counsel for the respondent/plaintiff having supported the concurrent findings in the judgments of the courts below had stated that none of the questions raised are pure questions of law and that they are only a blend of facts and law and that no substantial questions of law are involved and that there is no necessity to interfere with the decrees and judgments of the courts below which are rendered after recording concurrent findings supported by cogent and valid reasons.

5. Now this court has to examine as to whether or not any substantial questions of law are involved in this second appeal and whether the appeal deserves admission for disposal on merits or is liable to be dismissed at the stage of admission.

6. Before proceeding further, it is necessary to state briefly the cases of both the parties, which are relevant for consideration.

6.1 The case of the plaintiff, in brief, is this:

The plaintiff and the defendant are brothers. The plaintiff had brought the suit for partition of the plaint schedule property into two equal shares and for allotment of one such share to him on the ground that the plaint schedule property was purchased by him and the defendant independently and out of their income jointly under a registered sale deed dated 04.09.1990 i.e., exhibit A2 (= B8). Ever since the date of purchase, the plaintiff and the defendant are enjoying the property as co-owners and the same was not partitioned between the plaintiff and the defendant. However, the defendant who became hostile towards the plaintiff at the instance of some other persons, who are inimical to the plaintiff, had served a caveat notice claiming exclusive ownership and possession over the plaint schedule property. The plaintiff had also come to know that the defendant in collusion with revenue officials had got tampered with and manipulated the revenue records. The revenue records with the said entries are fabricated and do not create any rights in favour of the defendant. When a demand is made for amicable partition in the presence of elders on 09.02.2007, the defendant did not co-operate. Hence the suit is filed for partition.

6.2. The defence of the defendant, in brief, is this:

The plaintiff and the defendant have partitioned their properties long time back and, therefore, it is false to allege that the plaint schedule property is a joint property. In fact, the plaintiff and the defendant have partitioned their properties on 09.06.1992. Before the partition, they had jointly purchased the suit schedule properties from Janga Sudhakar Reddy under registered sale deed dated 04.09.1990 i.e., under exhibit A2. The said purchase was made by selling their ancestral joint family properties to Yerra Komuraiah, Jangidi Beeraiah, Utkoori Venkataiah and Utkoori Kishtaiah. After the purchase of the plaint schedule property, the plaintiff and the defendant have partitioned the properties and the plaint schedule property was allotted to this defendant

and the plaintiff was allotted land to an extent of Ac.7.27 guntas in Sy.No.629/1A and 626/B, 631/A, 631/B and 627 along with Well and electric motor. The plaintiff having sold away the properties that were allotted to him had brought the suit. The plaintiff and the defendant had got mutated the properties in their names in the revenue records as owners and possessors as per the partition between them. Since then, the plaintiff and the defendant are in peaceful possession and enjoyment of their respective properties. The sons of the defendant had filed OS.No.192 of 2006 on the file of the Court of the Junior Civil Judge, Jangaon against the plaintiff and his sons for the relief of perpetual injunction and after filing of the said suit this suit was brought by the plaintiff to deprive the defendant of his valuable rights in the plaint schedule property. Since there was an earlier partition and as the defendant is the exclusive owner of the plaint schedule property, the suit for partition is not maintainable and is liable to be dismissed.

6.3 Based on the above pleadings, the trial Court had framed the following issues.

- 1. Whether there was a partition took place in between plaintiff and defendant on 09.06.1992 and the suit schedule land was fallen to the share of defendant in that partition?**
- 2. Whether the plaintiff is entitled for partition and separate possession of suit schedule lands?**
- 3. To what relief?**

6.4 At trial, the plaintiff and his supporting witness were examined as PWs1 and 2 and exhibits A1 to A8 were marked. On the side of the defendant, the defendant and his supporting witnesses were examined as DWs1 to 5 and exhibits B1 to B20 were marked.

7. On merits, the trial Court had decreed the suit of the plaintiff as prayed for. The first appeal preferred by the defendant was dismissed. Therefore, the defendant is before this court.

8. I have carefully gone through the pleadings and noted the submissions of the learned counsel for both the sides. I have given earnest consideration to the pleadings, the evidence and the submissions.

9. Admittedly, under exhibit A2-sale deed, the property was jointly purchased by both the plaintiff and the defendant. In the absence of any other evidence to the contra, it follows that the plaintiff is entitled to a half share in the plaint schedule property. While denying the plaintiff's right to seek partition, the defendant had *inter alia* contended that there was a partition between him and the plaintiff subsequent to the purchase of this property and that in that partition the plaint schedule property was allotted to the share of the defendant and that some other property was allotted to the share of the plaintiff and that the plaintiff had sold away the property that was allotted to his share. However, the defendant could not file any document to show that there was a partition on 09.06.1992. Though it is stated by him that there is a faisalnama regarding partition no evidence was adduced in support of the said statement. Except the revenue records, no other record was produced. The law is well settled that entries in revenue records do not confer or take away existing title. The view of this Court is reinforced by the decision in **Suraj Bhan and others v. Financial Commissioner and others**^[1]. The partition pleaded and which was not established is of no avail as the property was admittedly purchased jointly under exhibit A2 sale deed by the plaintiff and the defendant. Section 45 of the Transfer of Property Act reads as follows:

“Joint transfer for consideration:

Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally

interested in the property.”

As per the said provision, the manner in which several persons can become common owners in respect of single property is evident. Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical as nearly as may be with the interests to which they were respectively entitled in the fund. The law is well settled that when a property is purchased in joint names it follows that the property purchased belonged in common to both. Further, possession of one co-owner inures to the benefit of the other co-owner. It is not the case of the defendant that he had perfected title by adverse possession. The law is also well settled that one co-owner cannot claim adverse possession against the other co-owner.

10. Having thus analytically examined the facts and the evidence, this Court finds that the well reasoned findings of the Courts below, which are concurrent, do not call for interference and that there is no substance in the substantial questions of law raised and that no substantial questions are involved and that, therefore, there is no merit in the second appeal and the second appeal being devoid of merit is liable for dismissal at the admission stage. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. In the case on hand, as this Court finds that no substantial questions of law are involved, this second appeal is liable for dismissal at the stage of admission in view of the settled legal position and in view of the narrow compass of Section 100 of the Code. Accordingly this Court finds that no case is made out for admitting the second appeal.

11. Accordingly, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

19th August, 2015
Vjl

M. SEETHARAMA MURTI, J

[\[1\]](#) (2007) 6 SCC 187