

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.343 of 2015

Date:02.12.2015

Between:

Patnana Samba Murthy

... Appellant.

AND

Patnana Suri Appa Rao

...Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.343 of 2015

JUDGMENT:

This appeal is preferred challenging judgment and decree dated 26-03-2013 in A.S.No.143/2011 on the file of I Additional District Judge, Rajahmundry whereunder judgment and decree dated 30-08-2011 in O.S.No.40/2008 on the file of II Additional Senior Civil Judge (Fast Track Court), Rajahmundry is confirmed.

2. Appellant herein is defendant in O.S.No.40/2008 filed by respondent herein for declaration of title and recovery of possession with mesne profits. The trial Court, on a consideration of oral and documentary evidence of both parties, decreed the suit holding that plaintiff is the absolute and exclusive owner of plaint schedule property and entitled to recover vacant possession by evicting

defendant and also granted past profits at Rs.400/- per month from June 2006 till date of delivery. Aggrieved by the said judgment and decree, defendant preferred appeal to the District Court, East Godavari at Rajahmundry and I Additional District Judge, East Godavari, Rajahmundry, on a reappraisal of entire oral and documentary evidence, confirmed the findings of trial Court and dismissed the appeal. Aggrieved by the same, present second appeal is preferred.

3. Heard arguments.

4. Advocate for appellant submitted that the property originally belonged to Patnana Kannayya and the said Kannayya along with his wife Atchayamma executed a joint Will on 31-10-1996 reserving right to revoke the same and Kannayya died in the year 1997 and thereafter, Atchayamma executed a Will on 15-05-2000, as right was reserved in the earlier Will for revocation, Atchayamma has every right to change the earlier bequest, but both the trial Court and appellate Court under erroneous impression, did not accept the Will executed by Atchayamma and therefore, a substantial question of law as to the power of Joint Executives of a Will is involved and the same has to be decided by this Court, and the second appeal is to be admitted. Learned counsel for appellant placed reliance on the Judgment of Hon'ble Supreme Court in **Kochu Govindan Kaimal and others vs. Thayankoot Thekkot Lakshmi Amma and others**^[1]. Referring to the above judgment, Advocate for appellant submitted that Atchayamma has every right to revoke the joint Will as far as her share in the property is concerned.

5. On the other hand, Advocate for respondent-plaintiff contended that this very point was raised before first appellate Court and the

same was negated by relying on a judgment of Hon'ble Supreme Court reported in **Dilharshankar C. Bhachech vs. Controller of Estate Duty, Ahmedabad**^[2]. He submitted that trial Court discarded the Will of Atchayamma, which is marked as Ex.B1 holding that the said Will is surrounded by suspicious circumstances and that defendant failed to prove cancellation of the joint Will. He submitted that the said finding is upheld by the appellate Court, while reappraising the entire evidence of both parties. He further submitted that the decision of Hon'ble Supreme Court relied on by the appellant herein was considered by the trial Court and rightly distinguished the proposition laid down in that decision and held that it is not applicable to the facts of this case. He submitted that no question of law is involved much less substantial question of law, therefore the second appeal to be dismissed.

6. I have perused the judgment of trial Court and First Appellate Court and the other material papers including decision of Hon'ble Supreme Court referred to above. Admitted case of both parties is that Kannayya and Atchayamma executed a joint Will on 30-10-1996, it is a registered Will, which is marked as Ex.A3. According to appellant-defendant, after the death of Kannayya, Atchayamma executed a Will on 15-5-2000 bequeathing her share in the property to the defendant. This Will relied on by defendant is a unregistered Will and it is marked as Ex.B1. D.Ws.2 & 3 were examined to prove this document and trial Court, on elaborate discussion of the entire evidence, touching Ex.B1-Will, held that there are surrounding suspicious circumstances in respect of execution of Ex.B1-Will and as the defendant failed to remove those suspicious circumstances, disbelieved the said Will. First Appellate Court, on a reappraisal of entire evidence, accepted the findings of trial Court in respect of Ex.B1-Will. First appellate Court, while upholding the findings of trial

Court, further observed that Atchayamma had no right to execute Ex.B1-Will on the premise that she got half share in the property. Appellant mainly harped on the point that Atchayamma as a joint executant of Ex.A3-Will has reserved right of revocation and in exercise of the same, she executed Ex.B1-Will, therefore, there is a distinction between a joint Will and mutual Will, which was not noticed by Courts below. Such a situation would arise, if Courts below accepted both the Wills and negated the contention of defendant on the ground that Atchayamma had no power of revocation, but here the situation is different, Ex.B1-Will relied on by defendant is not accepted by both trial Court and appellate Court on the ground that there are surrounding suspicious circumstances, so when the Courts concurrently held that the Will relied on by appellant said to have been executed by Atchayamma is not proved, the question about her power of revocation would not arise. Courts below have rightly applied the decisions relied on by both parties to the facts of the case and they have not committed any error.

7. On a scrutiny of the material, I am of the view that no question of law is involved much less substantial question of law in this case and as such, there are no grounds to admit the second appeal.

8. For the reasons stated above, appeal is dismissed at admission stage. No costs.

9. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:02.12.2015

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[\[1\]](#) AIR 1959 SUPREME COURT 71 (1)

[\[2\]](#) AIR 1986 SURPEME COURT 1707