

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

SECOND APPEAL NO.268 OF 2015

Between:

Baswani Venkateswara Rao

.. Appellant

and

Baswani Hema Surya Narayana and others

.. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 31st JULY, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether their Lordship wishes to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

SECOND APPEAL NO.268 OF 2015

J U D G M E N T

The unsuccessful plaintiff in O.S.No.174 of 1998 on the file of the learned Additional Junior Civil Judge, Narsapur, West Godavari District, is in second appeal before this Court aggrieved by the judgment and decree dated 19.01.2015 of the lower appellate Court of the learned VI Additional District Judge (FTC), Narsapur, West Godavari District, confirming the dismissal of the suit.

The suit, O.S.No.174 of 1998, was filed by the appellant/plaintiff for partition and separate possession of his share in the suit schedule properties.

The following substantial questions of law are sought to be raised by the appellant/plaintiff:

1. Whether the Court below had properly considered the joint possession of the properties which clearly go to show that the partition had not taken place till today ?
2. Whether the Court below had properly appreciated the oral and documentary evidence relied on behalf of the defendants which clearly show that the schedule property is purchased with the income of joint family ?
3. Whether the lower appellate Court had considered the grounds raised by the appellant herein and properly framed points for consideration for deciding the appeal?

The parties shall be referred to hereinafter as arrayed before the trial Court.

As per the plaint averments, the second defendant is the father of

the plaintiff, while defendants 3 to 5 are his elder brothers. The father of defendants 1 and 6, late Lakshmana Swamy, was the brother of the plaintiff's father. Late Lakshmana Swamy and the plaintiff's father constituted a joint family and even after the death of late Lakshmana Swamy, the family continued to be joint. The plaintiff demanded partition of the joint family properties and for allotment of his share, but the defendants did not oblige. On the other hand, defendants 2 to 5 filed O.S.No.89 of 1995 on the file of the learned District Munisif, Bantumilli, seeking a permanent injunction against the plaintiff on the ground that the properties were already partitioned.

Defendants 2 to 4 and 6 were set *ex parte* and the suit abated against defendant No.5.

As per the written statement filed by the first defendant, no joint family was in existence and the suit schedule properties were not joint family properties. Ramanna, the plaintiff's father's father had only 160 square yards of vacant site in Narsapur, which was shown as a larger extent in item 2 of the plaint A schedule, while item 1 of the plaint A schedule belonged to the paternal grand mother of the plaintiff, being her Sthridhana property. Besides the 160 square yards of site, Ramanna also possessed Ac.3.11 cents in Lakshmaneswaram Village, which was shown as items 2 and 3 of the plaint B schedule. However, after the death of Ramanna, item 2 of the plaint A schedule and items 2 and 3 of the plaint B schedule, along with item 1 of the plaint A schedule which belonged to the paternal grand mother, were partitioned between Lakshmana Swamy and the plaintiff's father in or about the year 1968. In the said partition, Lakshmana Swamy got Ac.2.10 cents, while the plaintiff's father got Ac.1.01 cents in items 2 and 3 of the plaint B schedule. Lakshmana Swamy got Ac.0.55 cents in excess to compensate for the value of the motor engine taken by the plaintiff's father at that time. As the partition of the joint family properties took place between the plaintiff's father and Lakshmana Swamy, the father of defendants 1 and 6, the plaintiff was not entitled to seek partition of the

very same properties again.

The trial Court framed the following issues for consideration:

1. Whether the plaintiff is entitled to a decree of partition of the plaint schedule properties as prayed for ?
2. Whether the plaintiff is entitled to future profits as prayed for ?
3. To what relief ?

The plaintiff examined himself as P.W.1 and marked no documentary evidence in support of his case while the first defendant examined three witnesses, including himself (D.W.1), and adduced 49 documents in evidence.

The contention of the plaintiff before the trial Court was that a finding was rendered by the learned Junior Civil Judge, Bantumilli, in O.S.No.89 of 1995 to the effect that the suit schedule properties were joint family properties. He therefore contended that the said finding would be binding on the defendants. The trial Court was however of the opinion that as the nature of the suits was altogether different, any observation made by the learned Junior Civil Judge, Bantumilli, in O.S.No.89 of 1995 would not bind the parties in the partition suit. Further, the trial Court pointed out that the judgment in O.S.No.89 of 1995 had not attained finality as an appeal was pending. The trial Court also found against the plaintiff on the ground that he did not mark any evidence to support his plea that such a finding had been rendered in the other suit. *Per contra*, the voluminous documentary evidence adduced by the first defendant clearly established his claim that there was a prior partition between the predecessors-in-title of the parties. The trial Court therefore dismissed the suit.

In appeal, the lower appellate Court framed the following points for consideration under Order 41 Rule 31 CPC:

1. Whether the judgment and decree dated 22.03.2005 by the learned Additional Junior Civil Judge, Narasapur, suffers from any error, irregularity or illegality ?

2. Whether the plaintiff is entitled for partition and allotment of a share ?

3. To what relief ?

Upon due consideration of the material on record, the lower appellate Court concurred with the finding of the trial Court that there was a prior partition in the family and that the documentary evidence placed on record by the first defendant amply demonstrated the same. The appeal was accordingly dismissed.

Though the judgment of the lower appellate Court reflects certain errors, the same cannot be construed to mean lack of application of mind. The fact remains that the plaintiff miserably failed to establish his case before both the Courts below. No documentary evidence was adduced by him in support of his claim that the suit schedule properties still remained joint and were therefore liable to partition. The contrary evidence adduced by the first defendant clearly non-suited the plaintiff on this count. This Court therefore finds no merit in this second appeal and no question of law, much less a substantial question of law, arises for consideration.

The second appeal is therefore dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

31st JULY, 2015

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