

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

SECOND APPEAL NO. 340 OF 2015

Between :

Pedda Venkatamma W/o Sankara Narasihulu
R/o Near Brahmagari Gudi, PRT Street
Dharmavaram, Anantapuram district and others

.... Petitioner

And

Bandi Sankaramma W/o Chinna Mallesu
R/o D No. 16/713, PRT Street,
Dharmavaram, Anantapur district and others

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 02-09-2015

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : / No
Be allowed to see the Judgments ? :

2. Whether the copies of judgment may be marked : / No
To Law Reporters/Journals :

3. Whether Their Lordship wish to see the fair : / No
Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P. NAVEEN RAO

SECOND APPEAL No. 340 OF 2015

JUDGMENT:

This second appeal is filed questioning the judgment and decree dated 23.12.2014 in A.S. No. 5 of 2013 passed by the Senior Civil Judge, Dharmavaram, Anantapuram district confirming the judgment and decree dated 16.9.2005 in O.S. No. 27 of 1998 passed by the Junior civil Judge, Dharmavaram, Anantapuram.

2. The appellants herein are defendants 1 to 4. The first respondent herein is plaintiff and respondents 2 to 5 are defendants 5 to 8. For the sake of convenience, the parties are referred to as arrayed in the suit.

3. The plaint averments in brief are as under:

4. Sri Kandikunta Nagarathnam is absolute owner of the plaint property which is his self acquired property. He has no ancestral property. The plaintiff and Jayaramulu are his children through his first wife Smt Vengamma and on death of Vengamma, Kandikunta Nagarathnam married one Yellamma and through her he begot four daughters i.e., defendants 1 to 4. Jayaramulu died about 10 years prior to filing of the suit and defendant No.5 is his wife and defendants 6 to 8 are his children. Kandikunta Nagarathnam executed a will dated 3.7.1986 bequeathing the plaint schedule property to plaintiff and Jayaramulu. However, Jayaramulu relinquished all his rights before he got married and separated from his father. On coming to know about execution of will, in the year 1988, defendants sent away Kandikunta Nagarathnam out of plaint schedule property and plaintiff took him to her house and he was staying with her. While so, on 21.12.1989

Kandikunta Nagarathnam in presence of attestor executed a will bequeathing the plaint schedule property in favour of plaintiff alone by canceling the earlier will. The will dated 21.12.1989 was registered on the same day. On 8.1.1990 Kandikunta Nagarathnam died at the residence of plaintiff. Thereafter plaintiff became entitled to the plaint schedule property and requested defendants 1 to 4 to vacate the plaint property. Alleging that defendants 1 to 4 are in illegal occupation, plaintiff instituted the suit seeking delivery of possession and costs.

5. Denying the plaint averments, defendant no.2 filed a written statement which was adopted by defendants 1, 3 and 4. In the written statement it is stated that late K Nagarathnam had one son and one daughter through his first wife and four daughters through second wife. That K.Nagarathnam after the marriage of his son Jayaramulu sent him away by giving cash and gold and a relinquishment deed in the year 1957. That K Nagarathnam has sold the ancestral property and purchased the plaint property and same was treated as a joint family property. That Jayaramulu was separated from the joint family by giving cash and gold and K Nagarathnam has got relinquished his son and his son was living separately. That by the date of death of K Nagarathnam, 3rd defendant got married and 4th defendant was unmarried and they have got 2/3rd share and K Nagarathnam have got only 1/3rd share in the suit property. That the will is a fabricated one created with an ulterior motive to get wrongful gain and cause loss to defendants 1 to 4. That at no point of time K Nagarathnam lived with plaintiff. That late K Nagarathnam already discharged his duties towards children through first wife i.e., plaintiff and late Jayaramulu and there were no cordial relations between plaintiff and her brother's family or with defendants 1 to 4. That plaintiff used to come to her father's house occasionally once in 2 or 3 years and in the absence of defendants 3 and 4 plaintiff took away valuable documents from their father and fabricated the will. That K Nagarathnam got constructed a house for plaintiff in PRT street in the

year 1984-85. That on the threat given by plaintiff for dispossession, they have filed a suit in O S No. 168 of 1990 but later since there was no interference from plaintiff, they had withdrawn the suit. That plaintiff has no right, title or possession over the property.

6. Based on the pleadings, the trial Court framed the following issues for consideration;

1. Whether the suit properties are joint family properties of late K.Nagarathnam?
2. Whether Jayaramulu son of Nagarathnam has relinquished his right in the joint family properties and living separately since 1957?
3. Whether the defendants 3 and 4 have got joint share in suit properties, if so, to what extent?
4. Whether there was any division between the branch of first wife and the branch of second wife of late K.Nagarathnam
5. Whether the will is true, valid and binding on D-3 and D-4.?
6. Whether the plaintiff has no right, title and possession in the suit property?
7. To what relief.

7. Plaintiff examined herself as P.W.1 and examined attestor of will Sri Kota Ankamma as P.W.2 and marked documents in Ex.A1 to A-9. Ex.A-1 is registered sale deed dated 17.8.1933; Ex.A-2 is registered sale deed dated 19.9.1938; Ex.A-3 is registered will dated 3.7.1986; Ex.A-4 is registered will dated 21.12.1989; Ex.A-5 is death certificate dated 6.4.1990; Ex.A-6 is legal notice; Ex.A-7 is reply notice; Ex.A-8 is carbon copy of decree in OS No. 168 of 1990; Ex.A-9 is identity card.

8. First defendant examined herself as D.W.1 and also adduced the evidence of K.Narayana Swamy and J. Sathyanarayana as D.W.2 and 3 and marked documents Ex.B.1 to B.3. Ex.B-1 is registered relinquishment deed dated 5.5.1957; Ex.B-2 is tax receipt; Ex.B-3 is tax

receipt.

9. On the first issue, the trial court held that the property purchased by late K Nagarathnam under Ex A-1 and A-2 is self acquired property.

10. On the issue whether the will is true, valid and binding on the defendants 3 and 4, the trial Court held that execution of suit will is proved both by plaintiff and P.W.2. The trial court rejected the contention that will was executed in suspicious circumstances and is not valid. While discarding the contention of defendants that testator P.W.2 is interested witness, the trial Court held that Ex.A-4 is a registered will and relied on it.

11. Further in the absence of any documentary evidence adduced by defendants, the trial Court considering Ex.A-5 death certificate issued by municipality stating that K Nagarathnam died on 8.1.1990 at D.No.16/462, P.R.T. Street, Dharmavaram held that K Nagarathnam was residing with plaintiff till his death.

12. The trial court thus decreed the suit with costs in favour of the plaintiff and directed the defendants 1 to 4 to deliver the possession of the plaint schedule property to plaintiff within three months from the date of judgment.

13. Aggrieved thereby, the defendants 1 to 4 preferred A.S.No.9 of 2009 on the file of the Senior Civil Judge, Penukonda, numbered as A.S.No.5 of 2013 on the file of the Senior Civil Judge, Dharmavaram.

14. The lower Appellate Court determined the following issues for its consideration:

1. Whether the schedule property is self acquired property of Kandikunta nagarathnam?
2. Whether the registered will under Ex A4 dt 21.12.1989 is

true, valid and binding on defendants?

3. Whether the judgment and decree of the learned lower Court in O S No. 27 of 1998 is erroneous?

15. The lower Appellate Court held all the issues against defendants and dismissed the appeal confirming the judgment and decree in O.S.No.27 of 1998 dated 16.9.2005 and directed the defendants 1 to 4 to deliver vacant possession of the schedule property to plaintiff within three months from the date of judgment and decree.

16. Learned counsel for defendants 1 to 4 made forceful submissions against findings recorded by lower Courts. He contended that both the Courts below failed to consider Ex.B1 relinquishment deed which goes to show that the plaint property is a joint family property having purchased by Nagarathnam out of the income accrued on sale of ancestral property and investing it in a cloth business. He further submitted that courts below failed to consider the fact that Ex.A4 will is a fabricated one and was not proved beyond doubt and that plaintiff having secured the valuable documents from her father illegally fabricated the will and that the attesor of the will P.W. 2 is not an independent witness and he is relative of plaintiff as such he is an interested witness.

17. I have given my anxious consideration to the submissions made by learned counsel for defendants 1 to 4. It is seen that based on oral and documentary evidence brought on record, trial Court as well as first appellate Court concurrently held that the plaint property is self acquired property of Nagarathnam, he was not looked after by defendants 1 to 4 in his advanced stage of life, and was living with plaintiff. Being his daughter, she has looked after him till his death. Both the Courts below, have concurrently held that there is no suspicious circumstances surrounding execution of will, since it was a registered will and Nagarathnam signed the same before Sub Registrar.

Both the Courts concurrently held that evidence of P.W.2 attester cannot be doubted.

18. Except reiterating the grounds which were urged before the Courts below, no case is made out to entertain the second appeal. The decisions of trial Court and first appellate Court are based on sound legal principles. In the facts of this case, no substantial question of law arise for consideration in this appeal. The appeal fails and accordingly, the same is hereby dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 02.09.2015
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HONOURABLE SRI JUSTICE P. NAVEEN RAO

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Date: 02.09.2015

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