

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

SECOND APPEAL NO.174 OF 2016

DATED:04-03-2016

Between:

Turaga Lakshmi Narasimha Murthy ... Appellants

And

Turaga Hanumantha Rao (died),
for Legal Representatives, and others ... Respondents

COUNSEL FOR THE APPELLANT: Mr. Deepak Misra

COUNSEL FOR THE RESPONDENTS: -

THE COURT MADE THE FOLLOWING:

-
JUDGMENT:
-

This second appeal arises out of judgment and decree dt.24.6.2015 in A.S. No.78 of 2012, on the file of the III Additional District Judge, Guntur, whereby he has confirmed the judgment and decree dt.30.12.2011, in O.S. No.632 of 2004, on the file of the IV Additional Senior Civil Judge, Guntur.

I have heard Mr. Deepak Misra, learned counsel for the appellant, and perused the record.

The appellant filed the above mentioned suit for partition and separate possession of the plaint A and B schedule properties, and allotment of a share in C schedule property comprising fixed deposits and D schedule property comprising gold, silver and household articles. After filing the written statement, defendant No.1 died. The remaining defendants, who are respondent Nos.2 to 5 herein, have contested the suit. In the written statement, defendant No.1 pleaded that he was in service in ILTD Company and that from out of his savings he has purchased the plaint A schedule property under sale deed dt.18.11.1963. On considering the rival pleadings, the trial Court framed the following issues.

1. *“Whether the plaintiff is entitled for partition of the plaint schedule property as prayed for?”*
2. *To what relief?”*

On behalf of the appellant, he has examined himself as P.W.1 and also examined P.Ws.2 and 3. He has also got marked Exs.A.1 and A.2 on his side. Respondent Nos.2 to 5 examined themselves as D.Ws.1 to 4 and got marked Exs.B.1 to B.25. On considering the oral and documentary evidence of the parties, the trial Court partly decreed the suit by directing partition of B schedule properties and allotment of a share to the appellant, and dismissed the suit with regard to the

plaint A and C schedule properties. The appellant has filed A.S. No.78 of 2012, which was dismissed by the lower appellate Court.

At the hearing, Mr. Deepak Misra, learned counsel for the appellant, submitted that his client has filed the appeal feeling aggrieved by the said judgment and decree to the extent of the plaint A schedule property only. The learned counsel further submitted that both the Courts below have committed a serious error in not appropriately considering the admission of respondent No.3 herein as D.W.2 in his evidence that defendant No.1 has saved income derived from the plaint B schedule properties.

On a perusal of the judgments of the Courts below, I find that a thorough discussion was undertaken by both the Courts. In the written statement D.W.1 pleaded that the plaint A schedule property was purchased by him from out of savings from his salary. As observed by the lower Appellate Court, the appellant has failed to plead that the plaint A schedule property was purchased by defendant No.1 from out of the income from the plaint B schedule properties. Moreover, D.W.2 has also not admitted that the savings made by his father were utilized for purchasing the plaint A schedule property. In the absence of specific evidence adduced by the appellant and in the face of the admitted fact that defendant No.1 was an employee of ILTD Tobacco Company and earning salary, it was quite probable that he would have purchased the property from out the savings from his salary. In the absence of specific evidence to show that the plaint B schedule properties were yielding sufficient income and the defendant No.1 has realized the savings therefrom for purchasing the plaint A schedule property, the appellant is not entitled to a decree for partition of the said property. Both the Courts below, on appreciation of the oral and documentary evidence, have concurrently found that there is no evidence to show that the plaint A schedule property was purchased from out of the income derived from the plaint B schedule properties. Moreover, as the sale deed in respect of the plaint A schedule property

stood in the name of defendant No.1, who admittedly had his own separate income from his employment, the appellant failed to prove that the plaint A schedule property was purchased from out of the income derived from plaint B schedule properties. Hence, both the Courts below have rightly rejected the claim of the appellant qua plaint A schedule property.

For the above mentioned reasons, I do not find any substantial question of law for consideration in this second appeal.

As a sequel to dismissal of the second appeal, S.A.M.P. No.469 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

04-3-2016

bnr