

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY NINETH DAY OF APRIL
TWO THOUSAND AND SIXTEEN

PRESENT

THE HON'BLE SMT. JUSTICE ANIS

SECOND APPEAL No. 609 OF 2011

Between :

Y.Kannemma

... APPELLANT

A N D

Y.Lakshmi Devi and three others

...RESPONDENTS

This Court made the following:

THE HON'BLE SMT. JUSTICE ANIS

SECOND APPEAL No. 609 OF 2011

JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is directed against the judgment and decree, dated 18.02.2011, passed in A.S.No.28 of 2007 on the file of the V Additional District Judge, Tirupati, whereunder and whereby, the judgment and decree, dated 28.12.2005 passed in O.S.No.1766 of 2001 on the file of the I Additional Junior Civil Judge, Tirupati, were confirmed.

2. The appellant is the first defendant, the respondents 1 and 2 are the plaintiffs and the respondents 3 and 4 are the defendants 2 and 3 before the trial Court. For better appreciation of facts, the parties are hereinafter will be referred to, as they are arrayed before the trial court.

3. The suit is filed by the plaintiffs seeking declaration that the first plaintiff is the legally wedded wife of one deceased Y.Nagaraju and the second plaintiff is their daughter. The marriage of the said Nagaraju and the first plaintiff was solemnized as per Hindu rites and customs at Dharmarajula Gudi, Chandragiri village. After marriage, they lived happily for some time and out of their wedlock, the second plaintiff was born. Some time thereafter, the deceased Nagaraju developed aversion and disliking towards first plaintiff and started harassing her and in the year 1991, he necked out the first plaintiff under the influence of alcohol. Then, the plaintiffs filed M.C.No.4 of 1993 on the file of III Additional Judicial Magistrate of I Class, Tirupati for maintenance. After full fledged enquiry, the learned Magistrate granted Rs.400/- per month to the first plaintiff and Rs.200/- per month to the second plaintiff towards maintenance. As the deceased Nagaraju has not paid the maintenance, the plaintiffs filed Crl.M.P.No.2212 of 2000 in the aforesaid M.C. and thereby the salary of Nagaraju was attached. In the year 2001, during the course of his employment under defendants 2 and 3, the said Nagaraju died. Thereafter, the plaintiffs approached the defendants 2 and 3 for the death benefits and also for appointment on compassionate grounds, but the said defendants without providing job and without paying death benefits, postponed the matter on one pretext or other. Later on, the plaintiffs came to know that the first defendant was going to receive the death benefits of deceased Nagaraju and also appointment for one Lakshmi on compassionate grounds. The plaintiffs stated that the first defendant and the said Lakshmi have no right over the death benefits of said Nagaraju. Though the defendants 2 and 3 are well aware of the proceedings in M.C.No.4 of 1993, they failed to do justice. Then, the

plaintiffs issued notice demanding the defendants 2 and 3 to pay the death benefits, but the defendants failed to give any reply. Since there are rival claimants to the death benefits of Y.Nagaraju, the plaintiffs constrained to file the suit.

4. The first defendant in the Written Statement denied the relationship of plaintiffs and the deceased Nagaraju. The first defendant specifically stated that Nagaraju died while working in S.V.Engineering College Hostel and in all the Service Records maintained by the employer, the name of the first defendant is mentioned as 'wife' and even the death benefits were paid to the defendant No.1. According to the first defendant, her marriage with the deceased Nagaraju took place on 04.05.1979 at Mukkoti Eswara Devasthanam as per their caste customs and the marriage was duly consummated, and they blessed with one daughter by name M.Mahalakshmi on 11.01.1983. The defendants 2 and 3 also allotted quarters to the said Nagaraju and the first defendant along with her daughter and the deceased Nagaraju were residing in the said quarters. Even after the death of Nagaraju, the first defendant was residing in the said quarters. The defendant also stated that the school records of Mahalakshmi clearly show that Nagaraju admitted her in the school. The defendant further stated that the plaintiff filed the false suit to knock out the death benefits of Nagaraju for wrongful gain and that the suit is misconceived one, and finally prayed the Court to dismiss the suit.

5. The second defendant in Written Statement specifically contended that since there are rival claimants for the death benefits of Nagaraju, they would abide by the Court decision and pay the death benefits to the person or persons who produce the Court order or decree in their favour.

6. Basing on the pleadings, the trial Court framed three issues. During the course of trial, on behalf of the plaintiffs, PWs 1 to 8 were examined and got marked Exs.A.1 to A.7 and X.1 to X.6. On behalf of the defendants, DWs 1 to 6 were examined and got marked Exs.B.1 to B.38.

7. The trial Court, after considering the oral and the documentary evidence, partly decreed the suit declaring the first plaintiff as wife and the second plaintiff as the daughter of the deceased Y.Nagaraju and directed the defendant No.2 to pay the death benefits of the deceased Y.Nagaraju to the plaintiffs as they are the legal heirs of the deceased Nagaraju, and the rest of the suit claim i.e. seeking the relief of compassionate appointment, was dismissed.

8. Aggrieved by the judgment of the trial Court, the first defendant filed A.S.No.28 of 2007 on the file of the V Additional District Judge, Tirupati. The first appellate Court, on careful examination of the evidence on record, held that the trial Court has properly considered both oral and documentary evidence and correctly held that the plaintiffs 1 and 2 are the legally wedded wife and the daughter of the deceased Y.Nagaraju and gave a direction to the second defendant to pay the death benefits to them as they succeeded his estate, and dismissed the appeal by confirming the judgment of the trial Court. Challenging the same, the present Second Appeal is preferred by the first defendant.

9. The learned counsel for the appellant/first defendant argued that the first plaintiff is not the legally wedded wife of the deceased Nagaraju; that the trial Court erred in not considering Exs.B.36 and B.37 which are recorded by the University officials prior to the alleged marriage of the plaintiff; that the trial Court also erred in decreeing the suit basing on the statement in Ex.A.2; that the trial Court further erred in not considering Exs.B.33, B.36 and B.37, and finally, prayed the Court to allow the second appeal.

The learned counsel also relied on a case-law reported in *P.Chandrasekharan and others Vs. S.Kanakarajan and others*^[1], wherein the Hon'ble Supreme Court held at Para 16 as follows:

“This Court in *Hero Vinoth* (SCC pp.555-56, para 24) held:

“24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material

evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to decision based on no evidence, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.””

10. On the other hand, the learned counsel for the respondents 1 and 2/plaintiffs argued that the first plaintiff is the legally wedded wife of the deceased Y.Nagaraju and the second plaintiff is their daughter, who is blessed out of their wedlock; that during the lifetime of Y.Nagaraju, the plaintiffs filed M.C.No.4 of 1993 on the file of the III Additional Judicial Magistrate of I Class, Tirupati seeking maintenance and the learned Magistrate, after full fledged enquiry, granted Rs.400/- per month to the first plaintiff and Rs.200/- per month to the second plaintiff towards maintenance; that in the said Maintenance Case, the deceased Nagaraju was examined and he clearly admitted about his relationship with the plaintiffs as wife and daughter respectively; that the trial Court as well as the first appellate Court clearly held that the plaintiffs are the legal heirs of the deceased Y.Nagaraju; that Exs.B.36 and B.37 cannot be taken into consideration as the entries in the said record were entered by the officials of the defendant No.2, whereas Ex.A.2 is the statement given by the deceased Nagaraju on oath before the learned Magistrate in M.C.No.4 of 1993; that both the Courts elaborately dealt with the oral and the documentary evidence, and therefore prayed the Court to dismiss the appeal as there is no substantial question of law involved in this second appeal.

The learned counsel relied on a case-law reported in *Azrath Bivi and another Vs. Chinnathambi (dead) through LRs.*^[2], wherein the Hon’ble Supreme Court held at Para 10 as follows:

“We have gone into the judgments rendered by the trial court as well as the lower appellate court and the High Court. In our view, the findings recorded by the trial court as well as the lower appellate court did not suffer from any error what to say of the same being perverse. Therefore, the High Court was not justified in reversing the concurrent judgments and decrees of the courts below.”

The learned counsel also relied on a case-law reported in *Laxmidevamma and others Vs. Ranganath and others*^[3], wherein the Hon’ble Supreme Court held at Para 16 as follows:

“Based on oral and documentary evidence, both the courts below have

recorded concurrent findings of fact that Plaintiff's have established their right in 'A' schedule property. In the light of concurrent findings of fact, no substantial questions of law arose in the High Court and there was no substantial ground for re-appreciation of evidence. While so, the High Court proceeded to observe that the first Plaintiff has earmarked the 'A' schedule property for road and that she could not have full fledged right and on that premise proceeded to hold that declaration to Plaintiff's right cannot be granted. In exercise of jurisdiction Under Section 100 Code of Civil Procedure, concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained."

11. Now, the point that would arise for my consideration in this appeal is whether there is any substantial question of law involved in this appeal.

12. **POINT:**

A perusal of the oral and the documentary evidence produced by both sides, it is clear that the plaintiffs 1 and 2 are claiming that they are the legal heirs of the deceased Y.Nagaraju. The first plaintiff claims that she is the wife of the deceased Y.Nagaraju and her marriage was performed in the year 08.07.1988 as per Hindu rites and customs and the second plaintiff is their daughter. To prove this fact, the plaintiffs produced Exs.A.1 to A.4. Out of them, Ex.A.2 dated 01.08.1996 is the certified copy of deposition of Y.Nagaraju as RW1 in M.C.No.4 of 1993 on the file of the III Additional Judicial Magistrate of I Class, Tirupati. Both the Courts below concurrently held that the said Nagaraju while giving evidence clearly admitted that the first plaintiff is his wife and the second plaintiff is his daughter. To disprove the case of the plaintiffs, the first defendant claimed that she is the wife of Y.Nagaraju and her marriage was taken place in the year 1979.

13. The appellants are mainly relying on Exs.B.36 and B.37. Ex.B.36 is the attested copy of Form No.7 i.e. nomination form of Group Insurance Scheme of Y.Nagaraju. Ex.B.37 is the attested copy of nomination form of Employees Family Benefit Fund Scheme of S.V.University given by Y.Nagaraju. However, both the Courts below categorically held that Exs.B.36 and B.37 were recorded by officials of the University, whereas Ex.A.2 is the statement given by Y.Nagaraju before the Court in M.C.No.4 of 1993.

14. Admittedly, the appellant failed to explain what are the substantial questions of law involved in this second appeal. Further, the appellant failed to

show the perversity of the Courts below while passing the judgment and decree in favour of the plaintiffs. On the other hand, both the Courts below categorically held that the first plaintiff is the legally wedded wife of Y.Nagaraju and the second plaintiff is their daughter. Therefore, the case-law relied upon by the learned counsel for the appellant in *P.Chandrasekharan's case* (1 supra) has no application to the facts of the present case. Further, after considering the oral and the documentary evidence, both the Courts below gave concurrent findings and that findings need no interference by this Court. In any view of the matter, the appellant failed to establish that there is a substantial question of law involved in this appeal.

15. Accordingly, the Second Appeal is dismissed at the stage of admission. No costs. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

APRIL 29, 2016.

Anr

THE HON'BLE SMT.JUSTICE ANIS

SECOND APPEAL No. 609 OF 2011

29.04.2016

Anr

[\[1\]](#) (2007) 5 S.C.C. 669

[\[2\]](#) (2013) 14 S.C.C. 608

[\[3\]](#) (2015) 4 S.C.C. 264