

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

* * * *

Second Appeal No. 842 of 2016

Between:

Nalluri Venkaiah and others

...Appellants

And

Nalluri Ramanamma and others

...Respondents

JUDGMENT PRONOUNCED ON : 04.11.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : NO
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : NO

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Second Appeal No. 842 of 2016

Judgment:

This Second Appeal is preferred against the judgment and decree in A.S.No.64 of 2014 dated 26.07.2016 passed by the learned Principal District Judge, Ongole reversing the judgment and decree in O.S.No.713 of 2010 dated 06.06.2014 passed by the learned Principal Junior Civil Judge, Ongole.

O.S.No.713 of 2010 was filed for partition of suit schedule property i.e., Ac.0.15 cents of land with ancestral tiled house situated in Survey No.110 of Marellaguntapalem village, hamlet of Peda Kothapalli village, Maddipadu Mandal, Prakasam District into two equal shares and allotment of one such share to the plaintiffs. The suit was filed alleging that the suit schedule property is the joint property of the plaintiffs, deceased Venkateswarlu who is the husband of the first defendant and father of defendants 2 and 3. Originally, an extent of Ac.0.30 cents of vacant site was owned by four brothers, Nalluri Lingaiah, Veeraiah, Venkaiah and Ramachandraiah. The eastern side of Ac.0.15 cents out of Ac.0-30 cents fell to the share of Ramachandraiah and Venkaiah jointly. There was an ancestral tiled house in two portions in the said Ac.0.15 cents of site with a middle wall up to the panchayat road on the east belonging to the said Ramachandraiah and Venkaiah. The said Ramachandraiah died leaving behind him his only son Subbaiah. Nalluri Venkateswarlu is the only son of Subbaiah and he is the husband of the first defendant and father of defendants 2 and 3. The said Venkateswarlu is entitled to a joint share of Ac.0.07 ½ cents of Ramachandraiah and Venkateswarlu died leaving behind the defendants 1 to 3 as his sole surviving legal heirs. Whereas

Venkaiah died leaving behind his only son Chenchiah and he also died leaving behind the first plaintiff and his younger brother Ramachandrah. The first plaintiff and his younger brother Ramachandrah are entitled to the joint Ac.0.07 ½ cents out of the said Ac.0.15 cents belonging to their grand father Venkaiah. As the plaintiffs 2 and 3 are the successors of the brother of the first plaintiff who died 10 years back, the plaintiffs 2 and 3 orally relinquished their half share in Ac.0.07 ½ cents and since they did not execute any registered document they also joined in the suit along with the first plaintiff. The plaintiffs claim Ac.0.07 ½ cents out of Ac.0.15 cents since the said land of Ac.0.15 cents remained joint between the plaintiffs and Venkateswarlu. However, for the convenience sake the defendants are residing in northern portion whereas the first plaintiff is residing in southern portion. When a demand for partition was not met, they filed the present suit. The third defendant earlier filed O.S.No.576 of 2005 for permanent injunction against the first plaintiff.

A written statement was filed by the third defendant and the same was adopted by the defendants 1 and 2. The relationship between the parties was admitted. However, it was stated that the plaintiffs 2 and 3 orally relinquished their half share in Ac.0.07 ½ cents and not executed any registered document in favour of the first plaintiff and denied the remaining contents of the plaint. It was also stated that the present suit is a counter blast to O.S.Nos.576 of 2005, 305 of 2003 and 1179 of 2003. The partition was effected four generations back among the said Gangaiah and his brothers for the entire joint family properties including the suit schedule property by metes and bounds. Since then the ancestors of the respective branches including the present plaintiffs and defendants have been enjoying their respective shares of their property separately with

absolute rights with peaceful possession. They have been paying taxes separately by getting their separate passbooks to the lands and tobacco barns and paying house tax separately. If the suit schedule property was not partitioned, the successors of Gangaiah and Veeraiah are also necessary and proper parties to the suit.

Based on the above pleadings, the trial Court framed the following issues for trial.

1. Whether the suit schedule property is liable for partition?
2. Whether the plaintiffs are entitled for partition and separate possession as prayed for?
3. To what relief?

The first plaintiff examined himself as PW.1 and marked Ex.A1 office copy of legal notice and Ex.A2 postal acknowledgments of defendants 1 and 2. The third defendant was examined as DW.1 and Exs.B1 to B5 were marked. Exs.B1 and B2 are certified copies of the judgment and decree in O.S.No.576 of 2005, Exs.B3 and B4 are certified copies of judgment and decree in A.S.No.166 of 2009 and Ex.B5 is the certified copy of sale deed dated 01.02.1935.

The trial Court after considering the decision in Malireddy Sreeramulu Reddy v. Malireddy Ramakrishna Reddy¹, observed as follows with regard to issue No.1.

“In view of the above decision, there is no pleading certain items were kept joint with the consent of parties and partition of items so kept aside has become necessary. Once partition took place, the suit is not maintainable. The defendants not denying the suit schedule property is not joint family property. They are also admitting the suit schedule property is joint family property. When it is joint family property, it is liable for partition.”

¹ 2010(4) ALD 227

The trial Court also observed that there was no documentary proof with regard to prior partition and accordingly it held that the plaintiffs are entitled for partition of the suit schedule property and decreed the suit. Even though it was specifically pleaded by the defendants that they are residing in the northern portion and the first plaintiff is residing in the southern partition of the ancestral tiled house clearly showing the prior partition and Ex.B5 document of the year 1935 showing the names of the plaintiffs and defendants' predecessors in interest, the same was not considered by the trial Court. The existence of a middle wall was also not considered.

Against the said judgment and decree of the trial Court dated 06.06.2014, the defendants preferred A.S.No.64 of 2014 before the learned Principal District Judge Court, Ongole and he framed the following point for consideration.

“Whether the plaint schedule property was already partitioned and if so, whether the lower Court has erred in decreeing the suit of the plaintiffs?”

The lower appellate Court considered the evidence of PW.1 who stated that the ancestral house was constructed by his fore fathers and further stated that he does not know how his grand fathers Venkaiah and Ramachandraiah partitioned the tiled house and vacant site in Ac.0.15 cents of land. He further stated that he does not know who constructed the middle wall in between their portion and defendants' portion under Donakattu. The existence of wall between the house portion of the plaintiffs and defendants was taken note of by the lower appellate Court. PW.1 further stated in his deposition that the plaintiffs and defendants have been separately paying their house taxes and obtained pattadar

passbooks. The lower appellate Court also took note of the fact that under Ex.B5 dated 01.02.1935, Gangaiah purchased a part of the site of Ac.0.30 cents from the branch of the other brother wherein it was mentioned that the eastern boundary is the vacant site of Nalluri Ramachandraiah, grand father of the defendants. It also took into consideration the evidence of PW.1 stating that there is no proof to show that the schedule property is still joint. Accordingly, it allowed the appeal with costs by judgment and decree dated 26.07.2016 setting aside the judgment and decree passed by the learned Principal Junior Civil Judge, Ongole in O.S.No.713 of 2010 dated 06.06.2014.

Learned counsel for the appellants submits that when the third defendant filed a suit for injunction in O.S.No.576 of 2005 in respect of the property and when the said suit was dismissed, he filed appeal in A.S.No.166 of 2009 and the same was allowed. Against the said appeal, S.A.No.250 of 2012 was filed by the first plaintiff and the same is pending in this Court and in view of the same this Second Appeal also should be admitted.

The learned Counsel could not point out the evidence in support of the case of the plaintiffs to show that the suit schedule property is a joint property which is liable for partition and the substantial question of law involved in the present Second Appeal. The plaintiffs and defendants are third generation people and they have been enjoying their respective properties separately and paying house taxes. There was a wall in between the portions of the plaintiffs and defendants and there is no evidence to show that this item of property only remained joint. The original property which belonged to the four brothers appears to have been partitioned long back. There was no claim for partition, in view of

such past partition. No document is filed by the plaintiffs to show that the property was joint and on the other hand the evidence of PW.1 clearly shows that the parties were enjoying the property independently and a dividing wall was existing between the share of the plaintiffs' property and that of the defendants. Those facts were taken into consideration by the lower appellate Court and allowed the appeal preferred by the defendants. Merely because a Second Appeal arising out of a suit filed by the third defendant in S.A.No.250 of 2012 is pending, this appeal cannot be admitted. This Court sees no substantial question of law arising for consideration in the present Second Appeal.

The Second Appeal is, accordingly, dismissed at the admission stage. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Second Appeal shall stand closed.

Date: 04th November, 2016
Nsr

A. RAMALINGESWARA RAO, J