

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Second Appeal No.1172 of 1999

JUDGMENT:

This Second Appeal is preferred by the defendant aggrieved by the Judgment and decree dated 10.09.1999 in A.S.No.16 of 1998 passed by the Senior Civil Judge, Rajam, Srikakulam District whereby and whereunder the learned Judge dismissed the appeal filed by the appellant/defendant, by confirming the Decree and Judgment in O.S.No.71 of 1993 on the file of Junior Civil Judge, Rajam, granting perpetual injunction decree in favour of the plaintiff.

2) The factual matrix of the case is thus:

a) The case of the plaintiff is that the suit schedule land and some other lands belonged to one Karanam Jangam, which he got in partition with his three sons viz., Karanam Papayya, Appalaswamy and Appayya. Late Jangam enjoyed his share of properties during his life time and he bequeathed all his movable and immovable properties in favour of his daughter China Appamma with absolute rights by way of registered Will dated 16.02.1946 and after his demise, China Appamma succeeded to the properties covered by Will which are plaint schedule properties.

b) The said China Appamma had three daughters viz., Chandramma i.e., plaintiff, Appalanarasamma and Suramma. China Appamma's husband Sitayya predeceased her. One Appalaswamy is the second brother of China Appamma and he married one Lakshmi. The defendant is the son

of said Appalaswamy, born through the said Lakshmi. After the death of Lakshmi, Appalaswamy married the plaintiff and he died four years prior to the filing of the suit.

c) Whiles, China Appamma died intestate leaving her three daughters as her heirs and they succeeded her properties including the plaint schedule property. The 2nd daughter of China Appamma viz., Appalanarasamma died leaving her husband and three children as her heirs; thus the legal heirs of Appalanarasamma were jointly enjoying the properties of China Appamma including the plaint schedule properties. The plaintiff is looking after the properties and managing them as other legal heirs of China Appamma are residing at far-off places. The defendant has no right, title or possession in respect of the plaint schedule properties. However, he was proclaiming that he would trespass into the plaint schedule properties. Hence, the suit for perpetual injunction.

d) The defendant in his written statement traversed the material averments of the plaint and contended that the plaint schedule land belonged to the defendant and he has been in possession and enjoyment of the same. He contended that the registered Will dated 16.02.1946 was a rank forgery and late Jangam never executed any such Will in favour of his daughter China Appamma. According to him, Karanam Jangam died thirty years back and after his death, partition took place between his three sons i.e., father of the defendant and his two brothers, in which, the plaint schedule property fell to the share of the defendant's father Appalaswamy. Later Appalaswamy and the defendant partitioned their properties and in such partition, the plaint schedule properties fell to his share. Thus, he has

been enjoying the plaint schedule property and the plaintiff has no right in the plaint schedule land. Thus, he prayed to dismiss the suit with exemplary costs.

e) Basing on the above pleadings, the Trial Court framed the following issues:

(1) *Whether the plaintiff is entitled for permanent injunction as prayed for?*

(2) *To what relief, the plaintiff is entitled to?*

f) During trial, PWs.1 to 3 were examined and Exs.A1 to A5 were marked on behalf of the plaintiff. On the other hand, DWs.1 to 5 were examined and no documents are marked on his behalf.

g) On appreciation of facts and evidence, the Trial Court Decreed the suit holding that plaintiff is entitled for perpetual injunction.

h) Aggrieved, the defendant filed A.S.No.16 of 1998 before the Senior Civil Judge, Rajam, Srikakulam District, challenging the Judgment of the Trial Court.

i) After hearing both sides, the first appellate Court dismissed the appeal, confirming the Decree and Judgment in O.S. No.71 of 1993 on the file of Junior Civil Judge, Rajam. Hence, the Second Appeal at the instance of the aggrieved defendant.

3) The parties in this appeal are referred as they were arrayed before the Trial Court.

4) The judgment of the Trial Court would go to show that having relied upon Ex.A1—Will produced by the plaintiff and the connected oral evidence, the Trial Court held that the plaintiff could prove the Will and also her possession and enjoyment of the suit schedule land. It also held that the defendant, on the other hand, admitted in his cross-examination that he does not know when the partition took place between his father and his brothers. He further admitted that he had no document to show that he has got title and possession over the plaint schedule land and except the oral testimony of defendant, there was no other documentary evidence to show that the defendant was in possession and enjoyment of the plaint schedule land. On all these observations, the Trial Court decreed the suit in favour of the plaintiff. The first Appellate Court also agreed with the findings of the Trial Court and dismissed the appeal. Hence, the instant Second Appeal by the defendant.

5) Heard arguments of Sri M.V.S.Suresh Kumar, learned counsel for appellant/defendant. There was no representation on behalf of the respondent/plaintiff.

6) Challenging the findings of the Courts below, learned counsel for the appellant could argue that since the plaintiff claims the suit property on the strength of Will, she must establish that the plaint schedule property was bequeathed by her maternal grand father in favour of her mother China Appamma. The main defect in the Will is that no schedule of the properties allegedly bequeathed by late Jangam was mentioned in Ex.A1—Will, except stating that after partition with his sons, he got 1/4th

share which he bequeathed in favour of his daughters. Therefore, Ex.A1-Will cannot be relied upon to establish that the suit properties were bequeathed to China Appamma and on her demise, her daughters succeeded the same. In spite of the strong contention raised by the appellant/defendant before the Courts below, they did not consider this aspect on a proper perspective.

He would further argue that since the plaintiff is suitor seeking for perpetual injunction, she has to establish that she was in possession and enjoyment of the suit land as on the date of filing of the suit. However, the plaintiff has not produced even an iota of evidence showing her possession. Except filing of Exs.A2 to A5 i.e., land revenue receipts, she has not produced any other documents like cultivation Adangals, pattadar passbooks to show her title and possession over the suit schedule property. He would strongly contend that the land revenue receipts neither prove the title nor possession except payment of tax to the revenue authorities. Thus, he would contend that the plaintiff miserably failed to prove her title and possession over the suit schedule property. However, the Courts below erroneously granted decree in her favour. He thus prayed to allow the appeal by setting aside the Decree and Judgments of the Courts below.

7) The substantial questions of law framed are as follows:

- (1) *Whether the Lower Appellate Court is right in holding that the respondent/plaintiff has perfect title to the suit scheduled land under Ex.A1 Will?*
- (2) *Whether the Judgment of the Court below suffers from any illegality or irregularity?*
- (3) *To what relief?*

The above substantial questions of law framed are more or less intertwined, hence, they can be determined together.

8) **POINT Nos.1 and 2:** The main contention of the appellant/defendant is that the plaintiff failed to establish that the plaint schedule property was bequeathed to her mother by late Karanam Jangam, inasmuch as, in Ex.A1 the schedule of the property bequeathed to the plaintiff's mother is not mentioned. Therefore, from Ex.A1 it cannot be inferred that the suit properties were bequeathed to China Appamma. On this aspect when the judgment of the Trial Court is perused, in Para-7 of its Judgment, the Trial Court observed that no doubt no schedule was given in the Will but the plaintiff categorically stated that late Karanam Jangam bequeathed the suit schedule property and other properties in favour of China Appamma and executed Ex.A1—registered Will and the said piece of evidence went unchallenged inasmuch as there was no cross-examination on the said material aspect; it was not the case of the defendant that the plaint schedule property was not covered under Ex.A1—Will; the defendant did not take any plea or deny that the plaint schedule lands originally belonged to Karanam Jangam. So, it can be safely held that the plaint schedule lands were covered by Ex.A1—Will.

9) The Trial Court further observed that PW-2, who was the neighbouring land holder, stated that China Appamma, the mother of the plaintiff was given the said land by her father. Similarly, PW-3 Musali Taviti Naidu, identified the signatures of his father Sangam Naidu and his maternal uncle G.Chandram Naidu, who were the attestors of Ex.A1 Will.

The Trial Court observed that PWs-2 and 3 are the independent witnesses and they spoke about the execution of the Will and possession and enjoyment of plaintiff over the suit schedule property. Therefore, though the plaintiff did not produce the certified copies of No.2 Adangal, to show her possession in the suit lands as on the date of filing of the suit, the tax receipts coupled with oral evidence of PWs-2 and 3 would clearly establish that the plaintiff has been in possession and enjoyment of the plaintiff schedule land.

10) Then referring the evidence on defendant's side, the Trial Court observed that though DW-1 claimed that during the partition between his father Appalaswamy and his brothers the suit schedule lands fell to the share of his father and after death of his father, he succeeded the plaintiff schedule lands, except, his oral assertion, DW.1 could not produce any documentary proof. Had he been in possession and enjoyment of the plaintiff schedule land, he would have produced at least the land revenue receipts, but he did not do so. Though DW-2 who is the grand-son of Karanam Jangam, stated that the plaintiff schedule lands fell to the share of the father of the defendant, he admitted that his grand-father Karanam Jangam died in the house of the mother of plaintiff at Sarasanapalli and the said admission would probablise that Karanam Jangam might have executed Ex.A1-Will in favour of China Appamma out of love and affection.

11) Then referring to the evidence of DWs-3 and 5, the Trial Court observed that though they stated that the defendant is in possession and

enjoyment of the plaint schedule lands, they admitted in their cross-examination that they have no necessity to go to suit lands. In such a case, their evidence that the defendant was enjoying the suit lands cannot be given credence. The evidence of DW-4 was eschewed.

12) Thus, on all the above observations, the Trial Court believed Ex.A1 Will and held that the plaintiff could establish her title and possession over the suit schedule lands. The first Appellate Court also confirmed the judgment of the Trial Court. I have given anxious consideration to the evidence on record and concurring the findings of the Court below. It is true that in Ex.A1 Will, we do not find the schedule of the properties bequeathed by late Karana Jangam. However, the fact remains that Ex.A1 is a registered Will dated 16.02.1946 i.e., long prior to the filing of the suit when there were no disputes between the parties. Further PW-3, identified the signatures of the attestors on Ex.A1, who are his father and maternal uncle.

13) Having regard to the fact that the Will was executed long prior to the disputes between the parties and it being a registered Will and the signatures of the attestors were duly proved by an identifying witness and no suspicious circumstances were brought on record by the defendant except denying the Will, the genuineness of Will can be accepted. Thus, Ex.A1-Will would establish that late Karanam Jangam indeed executed Ex.A1-Will conferring his properties in favour of his daughter China Appamma.

a) In the Will, he stated that after partition with his sons, he got 1/4th share and the properties covered by the said 1/4th share were in his possession and enjoyment and he bequeathed the same in favour of his daughter China Appamma. The recital that partition took place between him and his three sons belies the contention of the defendant that partition took place among the sons of Karanam Jangam only after his death. This recital was made long prior to the present suit and hence, the said recital also can be believed along with Will.

14) Then, the evidence of PW-1 that Karanam Jangam bequeathed the suit property and other properties in favour of China Appamma under Ex.A1-Will stood remain unchallenged. From all these facts, as rightly observed by the Courts below, it can be said that what was bequeathed by late Karanam Jangam to his daughter China Appamma, was the plaint schedule land though the schedule was not specifically given in Ex.A1-Will.

15) Then, regarding the possession, it is true that the plaintiff has not produced the cultivation Adangals except filing land revenue receipts. However, possession was spoken by PWs.2 and 3 apart from PW.1 and they are the independent witnesses. Therefore, from the entire evidence on record, on behalf of plaintiff, it can be safely believed that the plaintiff succeeded the suit schedule properties. On the contra, as noticed earlier, the recitals in Ex.A1-Will would belie the contention of the defendant that the partition took place among his father and uncles after the death of late Karanam Jangam. Since the partition had already been taken place during

the life time of late Karanam Jangam and the suit properties fell to the share of late Jangam, the question of subsequent partition and falling of suit properties to the share of defendant's father as propounded by him, cannot be accepted.

16) Further, though the defendant claimed that he succeeded the suit properties through his father and enjoying the same, he did not file even a scrap of paper to this effect. So on the conspectus of evidence available on record, the Court below rightly granted the decree in favour of plaintiff which does not suffer any illegality, irregularity or perversity.

17) In view of the above findings on the substantial questions of law raised by the appellant, I find no merits in this Second Appeal.

18) In the result, this Second Appeal is dismissed by confirming the judgment and decree dated 10.09.1999 in A.S.No.16 of 1998 passed by the Senior Civil Judge, Rajam, Srikakulam District, dismissing the appeal filed by the appellant/defendant and decreeing the plaintiff's suit. No costs in this Second Appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 08.08.2017

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