

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

APPEAL SUIT No. 108 OF 1997

JUDGMENT:

1. The defendants 2 to 9 in Original Suit No.132 of 1990, on the file of the Court of District Judge, West Godavari at Eluru (for short, 'the trial Court'), preferred this Appeal, challenging the decree and judgment dated 23.02.1996; wherein the Suit filed by the plaintiff for partition of plaint-A schedule property into three equal shares and allot one such share including Rs.25,000/- past mesne profits and also future profits till delivery of possession of the plaint schedule property, was decreed.

2. The appellants herein were defendants 2 to 9 and the 1st respondent herein was the plaintiff and 2nd respondent herein was the 10th defendant before the trial Court. During pendency of the appeal, 8th appellant herein died and appellants 9 to 11 were brought on record as her legal heirs, *vide* order of this Court in A.S.M.P. No.1842 of 2008, dated 05.09.2008.

3. For convenience of reference, the parties hereinafter are referred to as arrayed before the trial Court.

4. The brief facts of the plaint are as follows: Plaintiff and 2nd defendant are the daughters of the 1st defendant through his 1st wife by name Sarada. Defendants 3 to 7 and 9 are the children of the 1st defendant through his 2nd wife – Sakuntala, 8th defendant. The plaintiff got married in the year 1975 and since then living with her husband at Hyderabad. 1st defendant and defendants 3 to 9 by living together constituted a Joint Hindu Family and the 1st defendant, who is kartha of the Joint Hindu Family, executed two settlement deeds *i.e.*, one in favour of his 1st wife Sarada, on 16.11.1957, and another in favour of the plaintiff

settling some lands on them with absolute rights. It is further stated that the plaintiff was granted patta for Ac.5.00 cents in R.S. No.56/3 of Jeelugumilli village by Tahsildar, Polavaram. It is further stated that the plaintiff is entitled to 1/3rd share in the lands of her deceased mother Sarada devolved on defendants 1 and 2 and plaintiff. The 1st defendant filed a declaration suit under Land Ceiling Act before the Land Reforms Tribunal, Kovvur showing all the said lands including of the plaintiff; wherein, the Land Reforms Tribunal, Kovvur declared the plaintiff as surplus land holder and took possession of Ac.1.96 cents out of Ac.5.00 cents in R.S. No.56/3 of Jeelugumilli, *vide* proceedings dated 04.02.1986 of the Additional Revenue Divisional Officer (Land Reforms), Eluru and a sum of Rs.107/- was granted towards compensation to the plaintiff. It is further stated that the plaintiff is living with her husband and her lands are being managed by her father, 1st defendant, as a trustee and he used to make over the income till four years prior to filing of the suit. As the 1st defendant became old and unable to manage things, his sons assumed management of the plaintiff's properties, which are fertile and yielding sufficient income, and have been assisting their father in cultivation of plaint 'A' schedule lands but not paying any amount to the plaintiff, which caused mental agony to the plaintiff including financial loss; misused their position and betrayed the confidence reposed in them by the plaintiff and as such misappropriated the income of the plaintiff and her properties. It is further stated that the defendants enjoying their position as trustees acted detrimental to the interests of the plaintiff and are trying to secrete some of her properties by creating a bogus document *i.e.*, sale deed dated 09.11.1977 in respect of land in R.S. No.4/1 of Ramannapalem village, which is invalid and cannot bind the plaintiff. Hence, the defendants are liable to pay at least Rs.75,000/- *p.a.* to the plaintiff towards mesne profits for the last three years prior to filing of the suit. The plaintiff being vexed

with the conduct of the 1st defendant, got issued a legal notice dated 24.01.1986 calling to render proper accounts, on his failure to do so, filed the instant suit.

5. The 1st defendant died during pendency of the suit.

6. The 4th defendant filed written statement denying the material allegations of the plaint *inter-alia* admitting, execution of two settlement deeds i.e., dated 16.11.1957 in favour of his 1st wife-Sarada and another in favour of plaintiff with absolute rights; granting Ac.5.00 cents of land to the plaintiff; entitlement of 1/3rd share of the plaintiff in the lands of her mother, which devolved on 1st defendant and his two daughters – plaintiff and 2nd defendant; Government's acceptance of surrender of Ac.1.96 cents of land out of Ac.5.00 cents of land in R.S. No.56/3 of Jeelugumilli and awarding of Rs.107/- as compensation to the plaintiff and entitlement of 1/3rd share each to the plaintiff, 1st and 2nd defendants in plaint-A schedule property and enjoying the said property jointly by them all those years. It was further stated that the 2nd item of plaint-A schedule in R.S. No.98/1 to an extent of Ac.6.29 cents was sub-divided as 98/1A to an extent of Ac.2.37 cents, 98/1B to an extent of Ac.3.46 cents and in the remaining extent of Ac.0.46 cents, a road was laid by the Government.

7. It is further stated that during the lifetime of 1st defendant, there is oral partition of plaint-A schedule property into three equal shares between plaintiff and defendants 1 and 2; however, prior to his death, 1st defendant managed the plaint-A schedule property till his death. It is further stated in the oral partition that the plaintiff got Ac.17.28 cents in R.S.No.29/1A on the northern side, Ac.2.49 cents in R.S.No.4/1 on the eastern side of Ramannapalem village and there is a cashew nut garden in about Ac.3.00 cents in Item-4, which fell to the share of plaintiff, and in

the remaining extent of land of the plaintiff, 1st defendant raised cashew nut garden in Ac.4.00 cents, which was not raised to the stage of yielding. It is further contended that sale deed dated 09.11.1977 in respect of Ac.1.00 cents of land in R.S.No.4/1 of Ramannapalem village is valid and binding on the plaintiff. Till the death of 1st defendant, he used to pay the net yield realized from Item-1 to the plaintiff and the other defendants never managed the lands of the plaintiff, caused any financial loss to her, never acted as trustees of the plaintiff and never tried to secrete any of the properties of the plaintiff; as such the defendants are not liable for payment of any mesne profits and he has no objection for taking possession of the plaint schedule property as it was not in his possession. It is further contended that the 1st defendant died on 14.11.1988 and prior to that, he executed a will on 10.10.1988 in a sound disposing state of mind bequeathing his share of property, got by him from his 1st wife in favour of his 2nd wife, defendants 8 and 9, and bequeathed his share in the joint family property in favour of his sons. This defendant contents that the suit is misconceived and, finally, requested to dismiss the suit with costs.

8. The defendants 2, 3 and 5 to 9 filed a memo adopting the written statement filed by the 4th defendant.

9. 10th defendant filed written statement denying the material allegations of the plaint *inter-alia* contending it is a firm and its collusion with the 1st defendant in creating the bogus sale deed dated 09.11.1977 in respect of Ac.1.00 cents of land and the said sale is not valid are not tenable. It is further stated that the 10th defendant being is a registered firm having its head office at Guntur and several branches at Ramannapalem, Jangareddigudem and other places. 1st defendant, Kartha of Hindu Joint Family, offered to sell Item-9 of plaint schedule

property and the 10th defendant for the purpose of starting tobacco stocks and for construction of godown, purchased the said item at a market value of Rs.4,000/- per acre, obtained registered sale deed dated 09.11.1977 and since then the 10th defendant-firm has been in exclusive possession and enjoyment of the property to the knowledge of plaintiff. Thus, the 10th defendant is a *bona-fide* purchaser of the property and as such the suit is not maintainable against it, as Item-9 of plaint-A schedule property does not form part of schedule property covered by settlement deed dated 16.11.1957 and the 1st defendant owns Item-9 of plaint-A schedule property and he was competent to sell the property as Manager and the plaintiff has no right to question the same. It is further stated that the Special Deputy Collector issued notice to the 10th defendant directing to surrender Ac.0.52 cents of land out of Ac.1.00 cents of land and the 10th defendant contested the proceedings, which is pending by then and finally contends that it is not a necessary party and sought for dismissal of the suit with costs.

10. On the basis of above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff surrendered Ac.1.96 cents, out of Ac.5.00 cents in R.S. No.56/3 of Jeelugumilli village towards her excess declared in her land ceiling case?
2. Whether the plaint schedule is correct?
3. Whether the yields alleged by the plaintiff on the plaint schedule lands are correct?
4. Whether Ac.1.00 cents, out of Ac.3.49 cents was sold by the 1st defendant to the 10th defendant under registered sale deed?
5. Whether incomes alleged by the plaintiff on the schedule lands are correct or whether they are exaggerated?

6. Whether there is partition of the properties during the lifetime of the 1st defendant?

7. Whether the defendants 2 to 9 ever managed the lands of the plaintiffs 2 to 9 and whether they are liable to account to the plaintiff?

8. Whether the will dated 10.10.1968 was executed by the 1st defendant and whether it is true, valid and binding on the plaintiff/

9. To what relief?

11. During course of trial, the plaintiff herself was examined as P.W.1 and marked Exs.A-1 to A-3 on her behalf. On behalf of the defendants, 4th defendant himself was examined as D.W.1 and other witnesses were examined as DWs.2 and 3 and Ex.B-1 was marked on their behalf.

12. Upon hearing the arguments of both the counsel, considering the oral and documentary evidence available on record, the trial Court decreed the suit in favour of the plaintiff, against the defendants 2 to 9 for partition of the plaint schedule properties into three equal shares and for allotment of one such share to the plaintiff, and for rendition of account for the income realized therein since four years prior to filing of the suit till date of delivery of schedule properties.

13. Aggrieved by the impugned decree and judgment, dated 23.02.1996, passed by the trial Court in O.S. No.132 of 1990, the defendants-appellants preferred this Appeal.

14. Heard both sides and perused the record. It has to be considered by both the sides that the subject property of the suit is situated within the notified scheduled area in Polavaram Taluq, Jeelugumilli Revenue Mandal and the decision rendered by this Court in **Ashifaquddin and others Vs.**

Mohd. Azizuddin and others¹ is not holding ground, in view of the judgment rendered by the Hon'ble Supreme Court in **Nagarjuna Grameena Bank and others Vs. Medi Narayana and others²** and the plaintiff is required to lay her claim before the Agency Court. In such event of claim being laid before the Agency Court, the same has to be decided by the Agency Court un-influenced by any judgment, decree or order passed by the Civil Courts.

15. In the circumstances narrated above, it is appropriate to reproduce Para 11 of the judgment rendered by the Supreme Court in **Nagarjuna Grameena Bank²**, wherein it was held as follows:

“11. It is, however, clarified that those persons who have decrees, orders or judgments in their favour passed by the Civil Court(s) may lay their claim before the agency court(s). In the event of such claims being laid before the agency court(s), the same shall be decided by the agency court(s) un-influenced by any judgment, decree or order passed by the Civil Court(s).”

16. In view of the judgment rendered by the Supreme Court in **Nagarjuna Grameena Bank²**, this Court has no jurisdiction to entertain the appeal so also the trial Court (civil court), which passed the impugned decree and judgment. The course available to the plaintiff-decree holder (1st respondent) is that she has to lay her claim in tune with the judgment of the Supreme Court in **Nagarjuna Grameena Bank²**.

17. Accordingly, with this observation, the Appeal Suit is disposed of. No order as to costs.

¹ AIR 1978 (354) DB

² Decided on 25.09.2012 in Civil Appeal No.5030 of 2004 and Batch

18. As a sequel, pending miscellaneous petitions, if any, shall stand closed as infructuous.

Dr. SHAMEEM AKTHER, J

Date: 27-06-2017.
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