

**HON'BLE SRI Dr. JUSTICE SHAMEEM AKTHER**

**Appeal Suit No.994 of 1998**

**JUDGMENT :**

The defendant No.2 in O.S.No.158 of 1989 on the file of the Court of the Principal Subordinate Judge at Vijayawada, is the appellant herein and he filed this appeal aggrieved by the judgment and decree passed in the above suit on 26.8.1997.

2. The suit was one filed for partition of suit schedule property into two equal shares and delivery of separate possession of one such share to plaintiffs 2 to 4.

3. The allegations in the plaint go to show that the plaintiff No.1 and his elder brother late Gangipogu Samson were given joint patta for the vacant site of an extent of Ac.0.03 cents, situate in Baptistnagar, Vijayawada on 2.7.1966 and since then both of them have been enjoying the said property jointly. Both of them constructed three terraced (slab) rooms and they have been living therein by paying necessary taxes jointly. The plaintiff No.1's elder brother Samson died on 14.4.1967 and the plaintiff No.1's elder brother's eldest son Solmon also died in the year 1988 at Machilipatnam. After the death of Samson, the defendants 1 to 5 and the 1<sup>st</sup> plaintiff and his sons have been residing in the said house jointly. The 1<sup>st</sup> plaintiff and his son Gangipogu Pitchireddy i.e., the 3<sup>rd</sup> plaintiff demanded the defendants orally for partition of the plaint schedule house property for several times, but the defendants did not cooperate with them. As the 1<sup>st</sup> plaintiff became

old, he wanted to settle the property, which fell to his share, to his sons, and he got issued a legal notice, dated 21.10.1988 to the defendants demanding for partition. The defendants 2 to 5 received the said notice, but did not choose to give either reply to the said notice or to partition the property. Hence, the suit.

4. The 2<sup>nd</sup> defendant filed the written statement and the defendants 1, 3, 4 and 5 filed a memo adopting the written statement of the 2<sup>nd</sup> defendant. The 6<sup>th</sup> defendant remained *ex parte*. It is stated in the written statement that the father of the defendants 2 to 6 - Gangipogu Samson occupied the plaint schedule property about more than 50 years back and has been living in the said property by raising thatched shed for sometime and subsequently constructed a pucca tiled house therein. He died in the year 1967 leaving behind the defendants 1 to 6 as his legal heirs. The 1<sup>st</sup> plaintiff was living at Narasaraopet as R.T.C. employee till about 1970. After the death of Samson, 1<sup>st</sup> plaintiff came to Vijayawada and requested the defendants to permit him to live in the plaint schedule property. As the 1<sup>st</sup> plaintiff is the brother of Samson, the defendants agreed for the living of the 1<sup>st</sup> plaintiff in a portion of the plaint schedule property and since then he has been living in the said portion as a licensee with the permission of the defendants. The defendants are not at all aware of the alleged patta jointly granted by the Government to the 1<sup>st</sup> plaintiff and father of defendants 2 to 6. The said patta does not confer any title to the plaintiffs in the plaint schedule property. The plaint schedule property and houses therein stand in the name of late Samson, the father of defendants 2 to 6, in the municipal records since the last 40 years. Hence, the plaintiffs have no right to demand for the

partition of the plaint schedule property between themselves and the defendants and that too for a half share in the plaint schedule property. After issuing the registered notice, dated 21.10.1988, the 1<sup>st</sup> plaintiff approached the defendants for a compromise, but he did not agree for the compromise suggested by the elders and went back and filed this frivolous suit with a view to harass the defendants. The defendants reserved their right to proceed against the 1<sup>st</sup> plaintiff and his sons for evicting them from the portion of the plaint schedule property in their occupation by filing a separate suit. Therefore, the defendants pleaded for dismissal of the suit.

5. On the basis of the above pleadings, the following issues have been framed by the trial Court:

- 1) Whether the plaintiff is entitled to the preliminary decree of partition as prayed for ?
- 2) To what relief ?

6. On behalf of the plaintiffs, PWs.1 to 3 were examined and marked Exs.A.1 to A.19. On behalf of the defendants, DW.1 was examined and marked Exs.B1 to B23.

7. After considering the material evidence on record, the trial Court partly decreed the suit passing preliminary decree with proportionate costs for partition of the plaint schedule vacant site admeasuring Ac.0.03 cents only into 2 (two) equal shares by metes and bounds and to put the plaintiffs 2 to 4 in possession of one such share. Aggrieved by the said judgment, the present appeal is filed by the defendant No.2.

8. The learned counsel appearing on behalf of the appellant contended that the trial Court has not appreciated all facts and circumstances and decreed the suit though there is ample evidence to substantiate that the suit schedule property is the absolute property of the defendants. The father of the defendant Nos.2 to 6 and plaintiff No.1 are brothers, the other plaintiffs are sons of plaintiff No.1. The plaintiffs have no right, title, interest over the suit schedule property, however, the trial Court erred in decreeing the suit in favour of plaintiffs without substance and material and ultimately prayed to set aside the impugned judgment and decree and dismiss the suit filed by plaintiffs.

9. On the other hand, the learned counsel appearing on behalf of plaintiffs – respondents herein contended that the trial Court has appreciated the entire evidence on record and held that the suit schedule property i.e., Ac.0.03 cents was given to the father of the defendant Nos.2 to 6 and plaintiff No.1. They have equal shares in the suit schedule property. The trial Court has taken all the facts and circumstances into consideration and recorded findings based on evidence on record. There is nothing to substantiate any other opinion and ultimately prayed to dismiss the appeal.

10. In view of the contentions put-forth, the following points are come up for determination :

- (i) Whether the judgment and decree for partition passed in favour of plaintiffs is liable to be set aside ?
- (ii) To what result ?

11. There is evidence of P.Ws.1 to 3 to show that the suit schedule property consisting of Ac.0.03 cents is a joint family property of defendant

Nos.2 to 6 and father of plaintiffs 2 to 4. Ex.A7 - certified copy of the joint patta issued in the name of the father of defendant Nos.2 to 6 and plaintiff No.1 - father of plaintiffs 2 to 4 issued by the Government on 2.7.1966, reveals that both of them have got equal rights, title and interest over the property. The other documents filed by both sides include tax receipts, demand notice and electricity bills. It is not in dispute that the suit schedule property is in Ac.0.03 cents. There is ample evidence to prove that the suit schedule property is covered under Ex.A7. As per the evidence on record, the defendants are not in exclusive ownership and possession of the land covered under Ex.A7. The trial Court while dealing this issue elaborately analysed the evidence and held that plaintiffs and defendants are entitled for equal shares in the suit schedule property, since this property covered under Ex.A7 was given to the father of defendant Nos.2 to 6 and plaintiff No.1. The trial Court has also recorded findings assigning valid reasons. There is nothing to take a different opinion.

12. Under these circumstances, it can be safely concluded that the plaintiffs and defendants are entitled for equal shares in the suit schedule property. Consequently, there is nothing to reverse the judgment and decree impugned. Point No.1 is answered accordingly.

13. In the result, the Appeal Suit is dismissed confirming the judgment and decree, dated 26.8.1997 passed in O.S.No.158 of 1989 by the Principal Subordinate Judge at Vijayawada. No order as to costs.

14. Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

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Dr. JUSTICE SHAMEEM AKTHER

24<sup>th</sup> March, 2017

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