

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Appeal Suit No.480 of 1996

JUDGMENT:

Defendant Nos.1, 2 and 4 in O.S.No.12 of 1982 preferred the instant appeal aggrieved by the final decree proceedings in I.A.No.244 of 1992 in O.S.No.12 of 1982 dated 25.10.1995 passed by the learned Subordinate Judge, Jagtial, whereby and whereunder the learned Judge decreed plaintiffs' suit for partition and allotted 24 shares each to plaintiffs and D1, 22 shares to D2, 2 shares to D3 and 4 shares to D4 in plaint 'A' and 'B' schedule properties.

2) The parties in the appeal are referred as they stood before the trial Court.

3) Brief facts of the case are thus:

a) Singireddy Lachireddy had two wives i.e. D2 and D3; Plaintiffs 1 and 2 are sons born through his second wife—D3; D1 and D4 are son and daughter born through his first wife—D2.

b) The plaintiffs' case was that they along with their father late father—Lachireddy and D1 constituted joint Hindu family and they were coparceners having 1/4th share each in plaint A and B schedule properties and Lachireddy met with homicidal death on 26.04.1981 and D1 was responsible for his death and hence he was tried in S.C.No.102 of 1981 on the file of Sessions Court, Karimnagar which was ended in acquittal as the evidence was insufficient.

c) It was their further case that after the death of Lachireddy, plaintiffs, D1, D2 and D4 agreed to divide the plaint A and B schedule properties among themselves amicably and accordingly they entered into an agreement dt.19.10.1981, but later D1, D2 and D4 changed their mind and denied partition of suit schedule properties and in spite of repeated requests by plaintiffs they failed to divide the suit lands.

Hence the suit.

d) D1, D2 and D4 filed written statement. While denying plaint averments, it was pleaded that D3 was not the wife and plaintiffs were not the sons of late Lachireddy; Lachireddy had only one wife—D2 and D1 and D4 and another son Thirupathi Reddy who died as bachelor, were born through her; Lachireddy and D2 belonged to Reddy community and D3 belonged to shepherd (Kurma) community and there was no custom of second marriage between those Communities. It is their case that originally D3 married to a person of Kurma community of Gattubuthkur village and plaintiffs and D3 were not entitled to any share in plaint A and B schedule properties and suit was not maintainable.

e) It was also their case that lands in items 10, 11, 12 and 16 and Ac.2.00gts in item No.9, Ac.1.30 gts. in item No.21, Ac.1.05 gts. in item No.22 and Ac.0.36 gts. in item No.23 of plaint A-schedule property were purchased by late Lachireddy under a registered sale deed dt.13.11.1970 nominally in his name with the sale proceeds of Sthreedhana property of D2 and therefore, the lands covered under

said sale deed cannot be the subject matter of partition and D2 was the absolute owner. They further pleaded, Lachireddy died intestate leaving D1, D2 and D4 as his legal heirs and therefore, plaintiffs and D3 were strangers and they had never been in possession and enjoyment over A and B schedule properties. They contended that plaintiffs with ulterior motive, implicated D1 in a murder case and the said case was ended in acquittal. During the pendency of said case plaintiffs got their signatures on the alleged agreement dt.19.10.1981 at Karimnagar under undue influence and coercion and therefore, the alleged agreement between the parties regarding partition was totally false. They denied about execution of any gift deed by late Lachireddy in favour of plaintiffs and contended he was not competent to gift any portion of undivided share in joint family properties in favour of D.3 and plaintiffs. They further pleaded that Lachireddy contracted debts from Cooperative Central Bank to a tune of Rs.10,000/- and from LMB Rs.12,000/- for development of agriculture and apart from those loans, he also contracted debts to the extent of Rs.30,000/- to meet the marriage expenses of his daughter—D4 and these debts were to be discharged from out of the income from plaint schedule properties. They finally pleaded, plaintiffs were not in joint possession of plaint A and B schedule properties and they were not the members of joint family and thus prayed for dismissal of the suit.

f) D3 filed separate written statement. While admitting the plaint averments, she pleaded that she was the legally wedded wife of late Lachireddy who married her 40 years back and out of said wedlock

plaintiffs 1 and 2 were born to her. She contended that D2 was married to late Lachireddy when she was aged 6 or 7 years and her marriage was not consummated till she attained puberty; meanwhile Lachireddy married her when she was aged about 17 years and lived with him till he was murdered. After attaining majority D2 joined her husband—Lachireddy and as the relationship between them was not cordial, she (D2) was living separately some time at her parents house and some time in a separate portion of joint family house. She contended that Lachireddy himself accepted her as legally wedded wife and plaintiffs were his legitimate children. She further contended that Lachireddy executed a Will dt.05.04.1981 in her favour bequeathing his 1/4th share in plaint A and B schedule properties with absolute rights and hence plaintiffs, D1, D2 and D4 have no right in the said property. The plaintiffs and D1 constituted joint Hindu family and plaint A and B schedule properties were joint family properties except the properties bequeathed to her under the Will. She also contended that Lachireddy was murdered by D1 on 26.04.1981 while he was sleeping and D1 was tried for the offence under Section 302 IPC and later he was acquitted in the criminal case. She did not know about execution of alleged agreement between plaintiffs and D1, D2 and D4 as she was not a party to the said agreement and same was not binding on her. She further contended that Lachireddy executed the Will in a sound and disposing state of mind and hence she was the absolute owner of those properties and they were not liable for partition. She also contended that execution of the Will was known to

plaintiffs and other defendants and after the death of Lachireddy mutation was also effected in the revenue records.

g) Basing on the above pleadings, the following issues were framed for trial:

1. *Whether the plaintiffs 1 and 2 are the sons and D3 is the second wife of late Singireddy Lachireddy?*
2. *Whether the plaintiffs 1 and 2 are the coparceners of defendants No.1 and whether the plaintiffs are in joint possession over the plaint schedule A and B schedule properties along with D1, D2 and D4?*
3. *Whether the plaintiffs 1 and 2 and D3 have any share in the plaint schedule properties?*
4. *Whether defendant No.2 is the exclusive owner of item Nos.10, 11, 12 and 16 of plaint A-schedule and Ac.2.00 in item No.9, Ac.1-03 gts. in item No.21, Ac.0.15 gts. in item No.22 and Ac.0.36 gts. in item No.23 of the plaint A schedule?*
5. *Whether the Singireddy Lachireddy had another son by name Thirupathi Reddy through defendant No.2 and whether he predeceased Singireddy Lachireddy?*
6. *Whether defendant No.2 is the legal heir of late Singireddy Thirupathi Reddy?*
7. *Whether the lands in Sy.No.520 (Ac.6-01gts.), Sy.No.618 (Ac.3-18gts.), Sy.No.634 (Ac.4-16 gts.), Sy.No.719 (Ac.0-07gts), Sy.No.720 (Ac.1-24gts.), Sy.No.761 (Ac.1-16 gts.) and Sy.No.802 (Ac.0-14 gts.) of Thadur village and house sites at Hyderabad and Laxmipur belong to the joint family of late Lachireddy?*
8. *Whether the alleged agreement dated 19.10.1981 was executed by defendants 1, 2 and 4 under undue influence and coercion?*
9. *Whether late Singireddy Lachireddy was competent in law to alienate the joint family properties by way of gift?*

10. Whether late Singireddy Lachireddy during his life time contracted debts from Co-operative Central Banks in sums of Rs.10,000/- and Rs.12,000/- LMB loan for development of agriculture?

11. Whether late Singireddy Lachireddy contracted debts to the extent of Rs.30,000/- to meet the marriage expenses for the marriage of defendant No.4?

12. Whether the court fee is paid under wrong provision of law?

13. To what relief?

h) Coming to judgment, issues 1 to 3 are concerned, the trial Court having regard to the evidence on record, more particularly PWs.2, 4 and 6 besides PWs.1 and 3, has held that D.3 was the second wife of late Lachi Reddy and plaintiffs were children born to D.3 through Lachi Reddy and they were entitled to a share. Issue No.4 is concerned, the trial Court negated the contention of D.1, D.2 and D.4 that some of the plaint schedule properties were purchased by late Lachi Reddy by disposing the ~~St~~reedhana gold ornaments of D.2 and hence those items exclusively belonged to D.2 and they were not liable for partition. Issue Nos.5 and 6 are concerned, the trial Court agreed with the plea of D.1, D.2 and D.4 that late Lachi Reddy had another son by name Thirupathi Reddy through D.2 and the said son predeceased his father as a bachelor leaving behind D.2 as his Class-I heir. Issue No.7 is concerned, the trial Court agreed with the contention of D.1, D.2 and D.4 that, apart from the plaint schedule properties some other properties mentioned in that issue were also joint family properties, which were not included in the plaint schedule. The trial Court held that if those properties were joint family

properties, they shall also be liable for partition. Issue No.8 is concerned, the trial Court held that Ex.A.6—agreement was genuine and the contention of D.1, D.2 and D.4 that their signatures were obtained on Ex.A.6 by exercising undue influence and coercion was false. Issue No.9 is concerned, the trial Court held that Lachi Reddy had right to gift away properties in favour of D.3. Issue Nos.10 and 11 are concerned, the trial Court held that except a debt of Rs.9,000/- contracted by late Lachi Reddy from Cooperative Bank, there were no other debts as pleaded by the defendants.

i) With the above findings, the trial Court decreed the suit for partition and passed a preliminary decree allotting 24 shares each to both the plaintiffs; 2 shares to their mother D.3; 24 shares to D.1; 22 shares to D.2 and 4 shares to D.4.

j) It should be noted that neither plaintiffs nor defendants filed any appeal questioning the preliminary decree. The plaintiffs filed I.A.No.244 of 1992 for passing final decree in terms of the preliminary decree. The trial Court it appears, has appointed an Advocate Commissioner, who filed his report and after due enquiry, having accepted the Commissioner's Report, it passed a final decree in terms of preliminary decree as per its order dated 26.10.1995.

Challenging the final decree, the defendants 1, 2 and 4 filed the instant appeal.

4) Pending appeal, R.1 died and as per Court order dated 25.07.2014 in AS MP No.1065 of 2014, R4 to R6 were brought on record as his LRs.

5) Heard arguments of Sri L.Prabhakar Reddy, learned counsel for appellants and Sri V.Ravindar Rao, learned counsel for respondents.

6) The argument of learned counsel for Appellants/defendants 1, 2 and 4 is mainly threefold:

a) Firstly, it is argued that the trial Court committed a serious blunder in holding that D.3 was the second wife of late Lachi Reddy and plaintiffs were his sons born through D.3. The evidence would clearly show that D.3 was only a concubine and plaintiffs were born to her through Lachi Reddy and hence they were only illegitimate children and they cannot get benefit under Sec.16 of Hindu Marriage Act.

b) Secondly, it is argued that the trial Court in Issue No.7 having held that the plaintiffs have hushed up lands covered by Sy.Nos.520, 618 , 634, 719, 720, 761 and 802 and did not include them in the plaint schedule and hence they were also liable for partition, did not order for their inclusion in the plaint schedule.

c) Thirdly, it is argued that the trial Court erred in accepting the Commissioner's report and passed a lopsided final decree without taking into consideration the objections raised by the appellants against the Commissioner's report.

7 a) Per contra, learned counsel for plaintiffs firstly argued that admittedly the defendants 1, 2 and 4 have not preferred any appeal against the preliminary decree and therefore, they cannot challenge the findings in the preliminary decree. In that view, their first contention in this appeal to the effect that the trial Court erred in holding D.3 as the 2nd wife of Lachi Reddy and plaintiffs as the children born through Lachi Reddy, cannot be accepted for, the defendants have not challenged the said finding by preferring an appeal against the preliminary decree. He placed reliance on *Mool Chand and others vs. Dy. Director, Consolidation and others*¹ to buttress his contention that the findings in a preliminary decree cannot be challenged in an appeal against final decree without preferring appeal against the preliminary decree.

b) Secondly, he argued that the items mentioned in Issue No.7 were added during the final decree proceedings by way of amendment to the plaint and they were also made subject matter of partition in the final decree proceedings and therefore, the argument of the appellants that those items were not included for partition is factually incorrect.

c) Refuting the third argument, learned counsel argued that the trial Court considered the arguments of both sides before accepting the Commissioner's report and then passed the final decree in terms of the preliminary decree and therefore, the final decree is perfectly correct. He thus prayed to dismiss the appeal.

¹ AIR 1995 SC 2493

8) In the light of above rival arguments, the point for determination in this appeal is:

“Whether there are merits in this appeal to allow?”

9) **POINT:** The first contention raised in the appeal is with regard to the correctness of finding of trial Court that D.3 is the second wife and plaintiffs are the children born to her through Lachi Reddy and they are the coparceners. This contention is in a way, challenging the finding of the trial Court on Issues 1 to 3. The question is whether the appellants can challenge the finding on Issues 1 to 3 in the preliminary decree, in an appeal against final decree without filing an appeal against the preliminary decree. Section 97 of Code of Civil Procedure provides the answer. It reads thus:

“Section 97. Appeal from final decree where no appeal from preliminary decree.—Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.”

Therefore, Sec.97 of CPC is clear to the effect that the correctness of the findings in a preliminary decree cannot be disputed in an appeal against the final decree, when no appeal was preferred against the preliminary decree. This aspect has been reiterated by Hon’ble Apex Court in **Mool Chand**’s case (1 supra). Therefore, the first contention raised by the appellants cannot be considered in this appeal in view of the embargo created under Sec.97 of CPC.

10) I do not find any merits in the second argument raised by the appellants either. It is true that while dealing with Issue No.7, the trial Court, it appears, held that the items covered by Sy.No.520(Ac.6-01 gts), Sy.No.618 (Ac.3-18gts.), Sy.No.634 (Ac.4-16gts.), Sy.No.719 (Ac.0-07gts), Sy.No.720 (Ac.1-24gts.), Sy.No.761 (Ac.1-16 gts.) and Sy.No.802 (Ac.0-14gts.) of Thadur village were also liable for partition along with other properties. Though such a finding was given, those properties were not shown in the preliminary decree. However, during pendency of the final decree proceedings, those items were included as Items 24 to 30 in plaint 'A' schedule as per orders in I.A.No.1162 of 1993 dated 17.01.1994. So in the ultimate analysis, the items detailed in Issue No.7 were also included and partitioned in the final decree proceedings. Hence, no prejudice is caused to the defendants.

11) Then with regard to the third argument, a perusal of the order in I.A.No.244 of 1992 in final decree proceedings, would show that the Commissioner has visited the suit properties after giving notice to both parties and he valued the plaint 'A' and 'B' schedule properties taking into consideration the location of the land, source of irrigation and distance from the village and market value etc., facts. The Commissioner was examined as CW1 in the final decree proceedings. The trial Court upon considering his evidence, accepted his report by holding that there were no tenable objections. In that view, the argument of

the appellants that the final decree was passed without considering their objections against the Commissioner's report does not hold water.

12) In the result, I find no merits in the appeal and accordingly, the same is dismissed by confirming the final decree proceedings in I.A.No.244 of 1992 in O.S.No.12 of 1982 dated 25.10.1995 passed by the learned Subordinate Judge, Jagtial. No costs in the appeal.

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

Date: 17.01.2017
Murthy/scs

U.DURGA PRASAD RAO, J

