

HON'BLE SRI JUSTICE R.KANTHA RAO

Appeal Suit No.2616 of 1996

Judgment:

This is an appeal by the plaintiff against the judgment and decree dated 04-6-1996 passed by the Subordinate Judge, Hindupur, Anantapur district in O.S.No.4 of 1996. The plaintiff instituted the suit for partition of the suit schedule property against the defendants.

2. The pleadings of the parties relevant for considering the appeal may be stated as follows:

(a) The plaintiff is the brother of one T.Nagappa who died on 05-3-1985. Nagappa was the first of the four sons of the plaintiff's parents. The 1st defendant is the wife of Nagappa while the defendants 2 and 3 are his children. There was some ancestral property owned by the family of the plaintiff and his brothers which was orally partitioned sometime in the year 1981 and the partition was evidenced by getting the lands subdivided by the Survey authorities. All these facts are admitted.

(b) It is contended by the plaintiff that he and his elder brother Nagappa, who were employees, jointly purchased the schedule property from one Govindappa for consideration of Rs.700/-. But they

obtained sale deed in the name of their mother Hanumakka as they did not obtain permission from the Departments in which they were working. The sale deed is Ex.A-1. According to the plaintiff, he contributed half of the amount for purchase of the property whereas his elder brother Nagappa contributed the remaining half. Admittedly, the property was not the subject matter of partition which took place in the year 1981. The registered sale deed Ex.A-1 is in possession of the plaintiff. The plaintiff's mother Hanumakka died in the year 1974. The plaintiff states that after the death of his mother Hanumakka,

he demanded his elder brother Nagappa for partition of the schedule property and to give him half share in the property but he did not agree. It is the version of the plaintiff that Nagappa was working in the Revenue Department mostly at Madakasira and somehow managed the mutation of property in his name in the Revenue records as well as in the records of the Gram Panchayat. Originally, the schedule property is a vacant site and after some time, some houses were constructed therein and they were let out to different persons.

The plaintiff claims that he contributed money for the construction of the said houses, whereas it is

the version of the defendants that Nagappa alone with his own earnings constructed the said houses.

(c) The version of the defendants is that the property was purchased by Nagappa in the name of his mother Hanumakka and the entire amount was contributed by Nagappa. Therefore, according to the defendants, the property exclusively belongs to Nagappa. Obviously, all the records pertaining to the property are in the name of Hanumakka and thereafter in the name of Nagappa and the defendants. They also asserted that they perfected their title to the suit property by adverse possession.

(d) The version of the plaintiff is that since the records relating to the schedule property stand in the name of the defendants, they are claiming the property exclusively denying his share. Therefore, he filed the suit for partition of the schedule mentioned property into two equal shares and to allot one such share to him.

3. Basing on the above pleadings, the trial Court settled the following issues:

- (1) Whether the plaintiff has contributed money for purchase of the suit schedule land and for the constructions and improvements made there as contended by him?
- (2) Whether the plaintiff has got half right in the suit property if so whether he enjoyed that right

at any time?

- (3) Whether the suit property is the exclusive property of late Nagappa when the defendants have succeeded?
- (4) Whether the defendants and late Nagappa perfected their title to the suit property even by adverse possession and enjoyment also?
- (5) Whether the plaintiff is in joint possession of the suit property, if not whether the court-fee paid is correct?
- (6) To what relief?

4. An additional issue - whether the suit transaction is hit by Benami Transaction Act (45 of 1988) if so of what consequence? was also framed subsequently by the trial Court.

5. However, mainly two questions fell for consideration before the trial Court. One is whether the plaintiff is able to establish that he contributed half of the amount for purchase of the schedule property and the other is whether the defendants perfected their title by adverse possession.

6. These are the main points which also arise for determination in the present appeal.

7. Before the trial Court, P.Ws.1 to 3 were examined and Exs.A-1 to A-26 were marked on behalf of the plaintiff. Whereas, D.Ws.1 and 2 were examined and Exs.B-1 to B-194 were marked on behalf of the defendants.

8. The trial Court on appraisal of the entire oral and documentary evidence on record answered all the issues against the plaintiff and in favour of the defendants and dismissed the suit.

9. Feeling aggrieved, the plaintiff preferred the present appeal.

10. I have heard Sri Muddu Vijay, learned counsel appearing for the appellant-plaintiff and Sri P.R. Balarami Reddy, learned counsel appearing for the respondents-defendants.

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11. Points 1 and 2:- There is no dispute about the fact that the property was purchased in the name of the plaintiff's mother Hanumakka. Admittedly, all the records pertaining to the property are in the name of Nagappa and after his death they were mutated in the name of the defendants. Since the plaintiff's version is that all the joint family properties were partitioned and only the schedule mentioned property remained joint between him and his elder brother Nagappa, the burden is heavy on him to show that he and late Nagappa purchased the property in the name of their mother Hanumakka. He did not adduce any evidence worth consideration in regard to the said aspect.

12. P.W.2, the nephew of P.W.1 who was 8

years on the date of execution of Ex.A-1 sale deed in favour of Hanumakka, deposed to the fact that the suit

property was purchased by the plaintiff and Nagappa. His evidence does not inspire any confidence.

13. One Venkata Das examined as P.W.3 stated in his deposition that he was a tenant in one of the houses in the schedule property. He stated that he used to pay the rents to Kistappa, the younger brother of Nagappa. He also deposed that in January, 1982 Nagappa gave him Rs.1,000/- and told him to handover the same to the plaintiff and that P.W.1 told him that, that amount was towards the rent of their joint houses. The evidence of P.W.3 also does not inspire any confidence and moreover he did not say that Nagappa told him that the amount is towards the share of the rent payable to the plaintiff.

14. The plaintiff did not adduce any documentary evidence showing his contribution in the purchase of the suit schedule property or the receipts of rents. Even according to the plaintiff, the schedule property is in possession of the defendants.

15. The plaintiff filed a criminal case against

Nagappa. It is C.C.No.1 of 1968 on the file of Judicial Magistrate of First Class, Madakasira. He examined his mother Hanumakka as his witness. The criminal case is on the allegation that Nagappa abused him in filthy language and defamed him. Obviously, the complaint does not refer to the right of the plaintiff in the schedule property. But Hanumakka, the mother of the plaintiff, deposed in the said case that the plaintiff alone with his own money purchased the schedule property in her name. Curiously, Hanumakka did not depose with regard to the incident in respect of which the criminal case was filed.

16. Further, the version of the plaintiff in the suit is that he and Nagappa jointly purchased the property in the name of Hanumakka, their mother. But the deposition of Hanumakka goes contra to the version of the plaintiff in the present case. Further, the trial Court rightly observed that only to create some evidence regarding the right of the plaintiff in the schedule property, Hanumakka was unnecessarily made to speak the factum of the plaintiff's right in the schedule property. Therefore, the evidence of Hanumakka, the mother of the plaintiff, is of no help to the plaintiff to prove his right in the schedule property.

17. On the other hand, the defendants adduced voluminous evidence Exs.B-1 to B-194 which show that the property is in the name of the defendants and they are in possession of the same.

18. When the joint family properties were partitioned in the year 1981 and shortly thereafter when Nagappa denied the right of the plaintiff in the schedule mentioned property which was allegedly kept joint, the plaintiff ought to have initiated legal action for partition of the property. But the plaintiff kept quiet and filed this suit in the year 1996. The oral and documentary evidence let in by the defendants clearly indicate that the property stands in their name and also they have been in possession of the property. The plaintiff on one hand failed to prove that he contributed money for the purchase of the property, on the other hand he also failed to prove that he ever questioned the possession and enjoyment of the defendants in respect of the schedule property till filing of the suit for partition. The trial Court, therefore, rightly held that the defendants also perfected their title to the property by adverse possession.

19. For the foregoing, none of the findings recorded by the trial Court calls for interference in the present appeal and they are confirmed. Accordingly, the appeal suit is dismissed. The miscellaneous petitions, if any, pending in this appeal shall stand closed. No costs.

R.KANTHA RAO, J.

09th May, 2016.
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HON'BLE SRI JUSTICE R.KANTHA RAO

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