

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

S.A.No.16 of 2017

JUDGMENT:

This Second Appeal is preferred challenging the judgment and decree dt.30-09-2016 in A.S.No.67 of 2010 of the VI Additional District Judge, Fast Track Court, Narasapur confirming the judgment and decree dt.21-10-2009 in O.S.No.59 of 2005 of the Senior Civil Judge, Narasapur.

2. The appellant herein is the plaintiff in the suit. He filed the suit for partition of the plaint schedule property into three equal shares and to allot him one such share.

3. The facts on record reveal that one Annapurnamma and Prasad Rao were husband and wife. Prasad Rao died in 1953. The appellant/plaintiff claim to have been adopted by Annapurnamma under Ex.A-1 dt.25-06-1963. Annapurnamma and Prasad Rao had a daughter by name Dhanalakshmi. The 1st defendant/1st respondent is the husband of Dhanalakshmi and respondent Nos.2 and 3/D-2 and D-3 are the sons of 1st respondent. Pending suit, 3rd respondent died and respondent Nos.4 to 6 were added as legal representatives.

4. The appellant contended that after he was adopted on 25-06-1963, he was treated as a natural born son by Annapurnamma, that he studied at Mogaltur, near Narsapur and that the paint schedule property was purchased by Annapurnamma under Ex.A-2 registered

sale deed, dt.20-02-1964. According to him, after such purchase, Annapurnamma and his sister along with the respondents were residing in the said premises and that Annapurnamma passed away in 1965. He contended that he and Dhanalakshmi succeeded to the properties of Annapurnamma, but he was employed in Chennai and other places and he ultimately retired from service and settled at Mogultur. He alleged that 1st respondent got executed a Will, Ex.B-1 dt.26-06-1963 in his favour when the appellant was away from Mogultur, Dhanalakshmi passed away subsequently and her share devolved on the respondents. He also contended that the respondents set up Ex.B-2 dt.10-08-1964, a codicil, allegedly executed by Annapurnamma bequeathing the plaint schedule property in favour of Dhanalakshmi and that Dhanalakshmi, executed Ex.B-3, a registered Will dt.02-03-1983 bequeathing the properties to respondent Nos.2 and 3, but the said codicil is a forged one. He contended that the respondents were not cooperating for the partition of property and so he filed the suit.

5. Respondent Nos.1 to 3 filed a Written Statement opposing the suit claim. They contended that Annapurnamma during her lifetime executed Ex.B-1 registered will and subsequently a codicil Ex.B-2 dt.10-08-1964 in a sound disposing state of mind and on her death in 1965, Dhanalakshmi inherited the property and from Dhanalakshmi, the respondents inherited the same.

6. The trial Court framed the following issues:

1. *Whether the adoption deed dt.25-06-1963 is a true, valid and binding on the defendants?*
(This issue was recasted as per orders in I.A.No.118 of 2009 in O.S.No.59 of 2005 dt.16-09-2009)
2. *Whether plaint schedule property is purchased by Eleswarapu Kasi Annapurnamma vide separate registered sale deed dt.20-02-1964?*
3. *Whether the Codicil said to be executed by Kasi Annapurnamma dt.10-08-1964 is true, valid and binding?*
4. *Whether the Will dt.02-03-1983 said to be executed by Murukutta Dhanalakshmi is true, valid and binding?*

Additional Issue:-

1. *Whether the suit is liable to be dismissed with exemplary costs?*
7. Before the trial Court, the plaintiff examined himself as P.W.1 and another witness as P.W.2 and marked Exs.A-1 to A-15. The respondents examined D.Ws.1 to 4 and marked Exs.B-1 to B-4.
8. By judgment and decree dt.27-10-2009, the trial Court dismissed the suit. It held that the appellant as P.W.1 admitted that he was 23 years at the time of adoption and stated in his cross examination that his date of birth was 01-12-1940. It held that the appellant was aged 23 years at the time of his adoption but under Section 10 of the Hindu Adoption and Maintenance Act, 1956, a child cannot be adopted unless he is less than 15 years of age and unless there is a custom and usage to the contrary. It considered the evidence

of P.W.2 and held that even his evidence did not support that in Brahmin community, a person who has become a major can be adopted. It held that the appellant did not challenge Exs.B-1 and B-2 till he filed the suit in 2005 and there was nothing unnatural in Annapurnamma giving the property as per Exs.B-1 and B-2 to Dhanalakshmi. It further held that even though Ex.A-1 adoption deed is a registered document, it cannot be treated as valid and an adoption of a person more than 15 years old cannot be valid. It therefore dismissed the suit.

9. Challenging the same, the appellant filed A.S.No.67 of 2010 before the VI Additional District Judge, Fast Tract Court, Narsapur.

10. By judgment and decree dt.30-09-2016, the said appeal was dismissed. After discussing the evidence on record, the appellate Court held that Annapurnamma was the original owner of the property and she executed Exs.B-1 and B-2 in favour of Dhanalakshmi. It held that the subject property being the self acquired property of Annapurnamma, which she purchased under Ex.A-2 dt.20-02-1964, she was entitled to execute Exs.B-1 and B-2 bequeathing the same to Dhanalakshmi.

11. Though the lower appellate Court went to the extent of saying that there was no reference in Exs.B-1 and B-2 to the adoption of the appellant, that observation does not appear to be correct.

12. Assailing the same, the Second Appeal is filed.

13. Learned counsel for the appellant contended that in the Court below, the application for additional evidence had been filed i.e. I.A.No.14 of 2015 by the appellant. It was allowed on 04-01-2016 and without noticing the same, the lower appellate Court had decided the appeal on 30-09-2016. He also contended that when Ex.A-1 adoption deed is brought on record, the fact that the appellant was adopted son of Annapurnamma cannot be doubted and that the Courts below was not correct in holding that the appellant was not adopted son.

14. It is not in dispute that the appellant as P.W.1 deposed that by the date of adoption in 1963, he was aged about 23 years. In his cross examination, he admitted that his date of birth was 01-12-1940 whereas Ex.A-1 adoption deed was executed on 25-06-1963. It is not in dispute that under Section 10 of the Hindu Adoption and Maintenance Act, 1956 only children below the age of 15 years are eligible to be adopted. Since admittedly the appellant was above the age of 15 years as on the date of whose adoption in 1963, his adoption is contrary to statute and therefore not valid.

15. It is true that the appellant did file an application for additional evidence, I.A.No.14 of 2015 before the lower appellate Court to receive registered GPA dt.17-02-1964 and registered sale deed dt.01-10-1984 and these documents were not considered by the

lower appellate Court when it decided the appeal. However, the purpose for which these documents were sought to be marked was to establish the adoption of the appellant by Annapurnamma. Once it is held by this Court agreeing with the finding of the Courts below that the said adoption is invalid, the non-consideration of these documents by the lower appellate Court makes no material difference to the result of the case.

16. It is also not in dispute that the property was purchased by Annapurnamma under Ex.A-2 sale deed dt.20-02-1964. Therefore, it is her personal property. Therefore, it was for her to deal with the property and she was entitled to dispose it of by Ex.B-1 Will and by Ex.B-2 Codicil. The question whether these documents are valid or not is not very relevant since the appellant who bases this claim for partition on the basis of his adoption cannot succeed once the adoption is held to be not valid.

17. Therefore, I do not find any merit in the Second Appeal and the same is accordingly dismissed at the admission stage. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-03-2017
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