

HON'BLE SMT JUSTICE ANIS

SECOND APPEAL No.1106 of 1999

JUDGMENT:

This appeal is filed by the appellant-plaintiff in O.S.No.1583 of 1994 under Section 100 C.P.C. against the judgment and decree dated 01.10.1999 in A.S.No.173 of 1996, passed by the IV Additional District Judge, Guntur, setting aside the decree and judgment passed in O.S.No.1583 of 1994 dated 07.10.1996.

2. The appellant herein is the plaintiff in O.S.No.1583 of 1994 on the file of the Principal Munsif Magistrate, Guntur and the respondents herein are the defendants in the aforesaid suit.

3. For the sake of convenience, the parties are referred to as arrayed in O.S.No.1583 of 1994 before the Principal Munsif Magistrate, Guntur.

4. The brief averments made in the plaint are as under:

The plaintiff filed the suit seeking declaration and consequential relief of possession in respect of the house property viz., Mangalore Tiles House bearing Assessment No.9564, D.No.17/228 constructed in an area of 150 square feet out of 174 square yards situated in Chilakaluripet Municipality, Guntur District. According to the plaintiff, originally the suit schedule property was purchased by one

Pragada Anasuryamma with the assistance and money of Byra Chenchu Krishnaiah. From the date of purchase she had been in possession and enjoyment of the said property on her own right. On 16.09.1983, she executed a Will in a sound and disposing state of mind bequeathing the suit schedule property in favour of Byra Chenchu Krishnaiah and another item in favour of defendant No.1. As per the Will, her husband died about 30 years back and she has fostered the defendant No.1 and given her in marriage to one Lakshmaiah and the said Lakshmaiah also died, and ever since the defendant No.1 is residing with her. As per the said Will, the said Byra Chenchu Krishnaiah purchased some property in her name and therefore, she divided her properties into 'A' and 'B' schedule properties. 'A' schedule property was given to Byra Chenchu Krishnaiah and 'B' schedule property was given to defendant No.1. Subsequently she died on 25.05.1985 and the Will executed by her came into force. The said Byra Chenchu Krishnaiah sold the 'A' schedule property under a registered sale deed dated 15.07.1985 to the plaintiff and delivered the possession of the said property. While so, defendant No.1 along with her henchmen trespassed into the suit schedule property and committed an offence, wherein a criminal case has been registered. On 07.10.1985, defendant No.1 filed a Caveat before the District Munsif Court, Narasaraopet alleging that Pragada Anasuryamma executed a Will on 10.05.1985 bequeathing her two properties in favour

of defendant No.1. According to the plaintiff, the Will executed on 10.05.1985 is not executed by Anasuryamma and it is a forged and fabricated document and the so called attestors are the close associates of defendant No.1 and the present suit is filed for declaration and recovery of possession and also for past mesne profits @ Rs.100/- per month from 01.09.1985.

5. Defendant No.1 filed a written statement stating that Pragada Anasuryamma and her husband Pragada Venkaiah had no children and they adopted defendant No.1 and brought her up as their own daughter and that defendant No.1 is none other than the own brother's daughter to the husband of Anasuryamma. Defendant No.1 was given in marriage to one Laxmaiah, who is none other than the own brother of Anasuryamma. The husband of defendant No.1 also lived as an illotom son-in-law of Anasuryamma and her husband. After the death of the husband of Anasuryamma, defendant No.1 and her husband were looking after Anasuryamma. Defendant No.1 started a Pan shop and defendant No.1 and Anasuryamma started a Pachari shop and also fuel business. Defendant No.1's family and Anasuryamma lived jointly and earned properties jointly in the name of Anasuryamma. The husband of defendant No.1 at about 10 years prior to the suit went to a village for the sake of mediation and he did not return thereafter. On 13.03.1967, defendant No.1 and late Anasuryamma jointly

purchased the vacant site to the extent of 60 square yards from one Velpuri Kotamma in the name of Anasuryamma. Defendant No.1, her husband and Anasuryamma jointly constructed a thatched house bearing municipal house No.17/225 with Assessment No.9686 and residing in the said house. Thereafter, they constructed a tiled house bearing municipal house No.17/226 with Assessment No.9687. Since then they are in joint and peaceful possession over the suit schedule property. While the matter stood thus, Anasuryamma became old and suffered a paralytic stroke to her left leg and she was bed ridden for about six years. Anasuryamma was attending her daily activities with the support of defendant No.1. Considering the services rendered by defendant No.1 Anasuryamma voluntarily executed a Will on 10.05.1985 in favour of defendant No.1 bequeathing all her rights in respect of both the properties. Pragada Anasuryamma died on 25.05.1985 and defendant No.1 performed her obsequies and the Will dated 10.05.1985 came into operation. Defendant No.1 has become the absolute owner of the properties. Since then she was in continuous peaceful possession over the suit schedule property. The alleged Will in favour of Byra Chenchu Krishnaiah is a forged and fabricated document brought into existence with the collusion of his friends and associates. The plaintiff filed a criminal case in C.C.No.96 of 1987 and the same was ended in acquittal. Finally, defendant No.1 stated that the suit is

not maintainable and prayed the Court to dismiss the suit with exemplary costs.

6. During pendency of the suit, defendant No.1 died. The defendants 2 and 3, who are the brothers of defendant No.1, were brought on record.

7. The brief averments made in the written statement, filed by defendant No.2 are as follows:

According to defendant No.2, late Pragada Anasuryamma executed an unregistered Will on 10.05.1985, bequeathing her properties in favour of defendant No.1. During her lifetime defendant No.1 executed a registered Will Deed on 26.10.1989 in favour of defendant No.2, who is none other than the own brother of defendant No.1. Ever since the death of defendant No.1 defendant No.2 is in peaceful possession and enjoyment of the property. The suit filed by the plaintiff is on the basis of a forged document and hence, the same is liable to be dismissed.

8. Defendant No.3 filed a written statement stating that defendant No.1 executed a Will on 03.07.1990 bequeathing all the properties in favour of defendant No.3 and that the Will came into operation after the death of defendant No.1 and defendant No.3 has become the absolute owner of the property. Even otherwise defendant No.3 succeeded to the estate of late defendant No.1 as per the Hindu Succession

Act, since he happens to be the brother of defendant No.1. It was finally stated that the alleged Wills dated 10.05.1985 and 26.10.1989 are forged documents and therefore, the suit is liable to be dismissed.

9. Basing on the pleadings, the trial Court framed seven issues and also framed another three issues on 30.09.1995.

10. Before the trial Court, on behalf of the plaintiff PWs 1 to 7 were examined and exhibits A1 to A21 were marked. On behalf of the defendants, DWs 1 to 7 were examined and exhibits B1 to B87 were marked. Basing on the evidence on record, the trial Court held that Ex.A10-Will dated 16.09.1983 in favour of Byra Chenchu Krishnaiah is a genuine document, whereas Ex.B1-Will Deed dated 10.05.1985 in favour of defendant No.1 is brought into existence subsequently to suit the convenience of the parties and decreed the suit. It is also observed by the trial Court that the plaintiff got title in respect of the property through Ex.A3-Sale Deed from Byra Chenchu Krishnaiah, and by believing the evidence of PW1 and PW4 the trial Court held that the plaintiff was dispossessed from the suit schedule property. The trial Court also awarded Rs.100/- per month as past mesne profits and decreed the suit for declaration and also for recovery of possession in favour of the plaintiff.

11. Aggrieved by the judgment of the trial Court, defendant No.2 filed A.S.No.173 of 1996 on the file of the IV Additional

District Judge, Guntur. The First Appellate Court allowed the said appeal and set aside the judgment of the trial Court. The First Appellate Court disbelieved Ex.A10-Will executed in favour of Byra Chenchu Krishnaiah and believed the Will executed in favour of defendant No.1-Sivaraju Janakamma. It is also observed by the First Appellate Court that defendant No.2 is the natural heir of defendant No.1-Janakamma and also the legatee under Ex.B1-Will and the First Appellate Court upheld the Ex.B1-Will dated 10.05.1985.

12. Aggrieved by the judgment of the First Appellate Court, the plaintiff filed the present appeal. On 31.12.1999, the Second Appeal was admitted, but no substantial question of law was formulated.

13. Learned counsel for the appellant formulated the following substantial question of law for consideration of the Second Appeal:

“Whether the lower Court is correct in interpreting the recitals in Ex.A10 and Ex.B1 and in holding that there are suspicious circumstances attending on execution of Ex.A10?”

14. Learned counsel for the appellant argued that the trial Court after considering the oral and documentary evidence rightly held that Ex.A10-Will is a genuine document whereas Ex.B1-Will Deed is not genuine and decreed the suit. He further argued that the First Appellate Court without

considering the evidence on record held that Ex.A10-Will is not true and valid and thus, the First Appellate Court is erred in deciding the Will. He further argued that there is ample evidence on record to show that Byra Chenchu Krishnaiah was with Anasuryamma after her husband's death and he himself purchased the property with his own money in the name of Anasuryamma and later the late Anasuryamma bequeathed the property in favour of Byra Chenchu Krishnaiah and also the property in favour of defendant No.1-Janakamma and therefore, there are no suspicious circumstances in executing Ex.A10-Will in favour of Byra Chenchu Krishnaiah and hence, the First Appellate Court is erred in holding that Ex.A10-Will is not true and valid. Therefore, the said finding of the First Appellate Court has to be set aside and the Second Appeal has to be allowed.

15. On the other hand, learned counsel for the respondents-defendants argued that the appellant-plaintiff claimed the right through Byra Chenchu Krishnaiah. Originally Anasuryamma is the owner of property and Byra Chenchu Krishnaiah is not at all related to Anasuryamma and further defendant No.1-Janakamma is the own brother's daughter of her husband Pragada Venkaiah and further Anasuryamma given in marriage of his brother Laxmaiah to Janakamma-defendant No.1 and prior to her death Anasuryamma executed Ex.B1-Will Deed in favour of defendant No.1-

Janakamma on 10.05.1985 and the said Will was the last Will executed by Anasuryamma and further defendant No.1 died issue less and her brothers were impleaded as defendants 2 and 3 in the suit. The First Appellate Court considering the evidence on record rightly held that Ex.A10-Will is not true and valid, whereas Ex.B1-Will Deed is a genuine one and thus, allowed the appeal by setting aside the decree of the trial Court. Learned counsel further argued that both the Wills are not registered and there is no necessity to register the Will. Further, there is unnaturality in bequeathing the suit schedule property in favour of Byra Chenchu Krishnaiah under Ex.A10-Will and bequeathing a small thatched house to defendant No.1-Janakamma and finally argued that the appellant has not made out any case to set aside the judgment of the First Appellate Court and prayed the Court to dismiss the Second Appeal.

16. **POINT**: Now the point that would arise for consideration in this appeal is whether the appellant has proved the substantial question of law?

17. A perusal of the record shows that there is no dispute that the suit schedule property consisting of Mangalore Tiled House situated in 174 square yards site belongs to Anasuryamma. Defendant No.1-Janakamma was the fostered daughter of Anasuryamma and was given in marriage to the brother of Anasuryamma by name Lakshmaiah and all are

living in the same house. The whereabouts of Lakshmaiah were not known for about 10 years prior to the suit. Anasuryamma died on 25.05.1985 and her husband died about 40 years earlier. The plaintiff obtained Ex.A3-Sale Deed dated 15.07.1985 from Byra Chenchu Krishnaiah. He claimed that Anasuryamma lived as a concubine of Byra Chenchu Krishnaiah and also claimed that he was a legatee under Ex.A10-Will dated 16.09.1983. By virtue of Ex.A3-Sale Deed the plaintiff claimed to have been put in possession by Byra Chenchu Krishnaiah, but later he was dispossessed by defendant No.1-Janakamma. Admittedly this theory of dispossession by Janakamma-defendant No.1 has been rightly disbelieved by the trial Court. Admittedly, Janakamma and Anasuryamma were living in the said house and evidently they are in possession of the suit schedule property. Defendant No.1 also lodged a Caveat under Ex.B58 on 06.08.1985 wherein she alleged that both the plaintiff and Byra Chenchu Krishnaiah were trying to interfere with her possession in the suit schedule property. Defendant No.1 also claimed another Will i.e., Ex.B1 executed by Anasuryamma in her favour. The two Wills of Ex.A10 claimed by Byra Chenchu Krishnaiah and Ex.B1 claimed by Janakamma were propounded in support of their claim for the suit schedule property. The plaintiff, who claimed the suit schedule property under Ex.A3-Sale Deed and his claim for title would totally depend upon the establishment of

Ex.A10-Will executed by Anasuryamma and that it was the last one. Whereas defendant No.1 also produced Ex.B1-Will Deed dated 10.05.1985, which was executed by Anasuryamma just 15 days prior to her death and it was the last one. Admittedly, during pendency of the suit defendant No.1-Janakamma died and respondent No.2 in the present appeal, who was none other than her natural brother, claims as a legatee under another Will i.e., Ex.B2 dated 26.10.1989 alleged to have been executed by Janakamma in his name. After the death of Janakamma, respondent No.2 has been in possession and enjoyment of the suit schedule property. It is also an admitted fact that the trial Court disbelieved Ex.B1-Will and held that Ex.A10-Will is the valid one and decreed the suit filed by the plaintiff. Aggrieved of the same, defendant No.2 filed an appeal in A.S.No.173 of 1996 against the judgment of the trial Court. The First Appellate Court after considering the judgment of the Supreme Court in **Kalyan Singh v. Smt. Chhoti**¹ categorically held that the testator Anasuryamma and the legatee Janakamma were living together in the same house and that exhibits B5 to B54 are the tax receipts which at best can establish that there are two different assessments for tiled house and thatched house and nothing more. The evidence of Byra Chenchu Krishnaiah that he lived in the house along with Anasuryamma was not accepted by the First Appellate Court because the said Byra

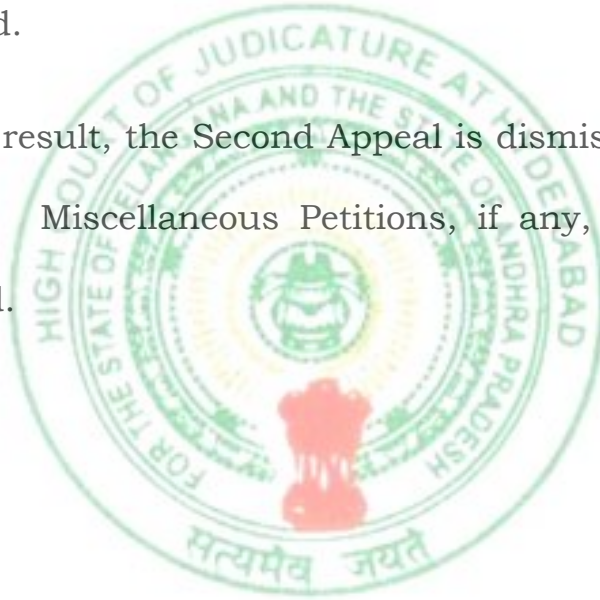
¹ AIR 1990 SC 396

Chenchu Krishnaiah had a wife and a separate house and he is not the permanent resident of the suit schedule property. The First Appellate Court also rightly held that the defendant No.1-Janakamma is none other than the close relative of Anasuryamma and she was even brought up by her and gave marriage with her brother Laxmaiah. Therefore, the First Appellate Court rightly held that there is no strange in Anasuryamma bequeathing her only property to Janakamma, who was brought up like her daughter and moreover she is the brother's wife. Further, Janakamma is also closely related because she is the daughter of her husband's brother and there are no suspicious circumstances to doubt the correctness of Ex.B1. Though the witnesses were cross examined at length, nothing could be elicited from them that they were speaking falsehood and obliged to defendant No.1-Janakamma. Therefore, the First Appellate Court, by accepting the norms laid down by the Apex Court, rightly held that Ex.B1-Will executed by Anasuryamma in favour of Janakamma was the last testament and it would be superceded the earlier Will i.e., Ex.A10 put forward by the plaintiff. The First Appellate Court also held that mere proof of execution of the Will is not enough and it must also be shown that the circumstances surrounding it would also establish that the Will propounded was genuine. In the present case, Anasuryamma is closely related to Janakamma and therefore, her executing the Will in favour of Janakamma

is not a strange one. After considering the oral and documentary evidence, the First Appellate Court rightly allowed the appeal and set aside the judgment and decree passed in O.S.No.1583 of 1994. Admittedly, the appellant raised the substantial question of law regarding the interpretation of recitals in Ex.A10 and Ex.B1, but the same cannot be the substantial question of law. Therefore, the appellant has failed to prove the substantial question of law raised in the appeal and hence, the Second Appeal is liable to be dismissed.

In the result, the Second Appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending shall stand closed.

25.04.2017
MVA



ANIS, J