

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CMA Nos.595 and 596 of 2014

COMMON JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

C.M.A.Nos.595 and 596 of 2014 are preferred by the plaintiff against the common order dated 18.11.2013 in I.A.Nos.1370 and 1371 of 2013 respectively in O.S.No.802 of 2013 passed by Special Sessions Judge for SC/ST (POA) Act, 1989-cum-Additional District & Sessions Judge, at L.B.Nagar, Ranga Reddy District whereunder learned Judge dismissed both the applications.

2) The parties in this appeal are referred as they were arrayed before the Trial Court.

3) The factual matrix of the case is thus:

a) The plaintiff filed O.S.No.802 of 2013 against defendants seeking partition of the plaint schedule lands into three shares and allot one such share to him and also to declare the sale deed dated 16.02.2013 executed by defendants 2 and 3 in favour of defendant No.4 in respect of the land admeasuring 2 Acres in Sy.No.214/part as null and void and not binding on the plaintiff. Defendants 1 and 2 are the brothers of the plaintiff. Defendant No.4 is the son of defendant No.2, defendant No.3 is a third party. Plaintiff's case is that their father Gurram Venkat Reddy along with Sama Malla Reddy and Tekula Linga Reddy, purchased following lands

under a registered sale deed vide document No.234/1964, Ranga Reddy

District:

S.No.	Survey Number	Extent
1	209	Ac.11-13 gts
2	210	Ac. 8-30 gts
3	211	Ac. 4-39 gts
4	212	Ac. 8-00 gts
5	213	Ac.16-33 gts
6	214	Ac. 8-27 gts
7	225	Ac. 1-06 gts
8	226	Ac. 1-11 gts
9	227	Ac. 1-24 gts
10	228	Ac.20-00 gts
11	230	Ac. 3-00 gts
12	241	Ac. 0-32 gts
	Total	Ac.86-15 gts

b) The three co-sharers divided the aforesaid lands under written document dated 06.05.1965, wherein Gurram Venkat Reddy got the following lands to his half share:

S.No.	Survey Number	Extent
1	209	Ac.11-13 gts
2	212	Ac. 8-00 gts
3	213	Ac. 7-33 gts
4	214	Ac. 8-27 gts
5	225	Ac. 0-23 gts
6	226	Ac. 0-25 gts
7	227	Ac. 0-36 gts
8	228	Ac. 5-00 gts
9	230	Ac. 1-20 gts
10	241	Ac. 0-16 gts
	Total	Ac.44-29 gts

Remaining half share was allotted to S.Malla Reddy and the sons of late Tekula Linga Reddy. The parties got mutated their respective shares in their names. Ever since, the father of the plaintiff and defendants 1 and 2 were in peaceful possession and enjoyment of the suit schedule properties.

c) The further case of the plaintiff is that their father died intestate about 35 years back and their mother also died in the year 2001. Plaintiff and defendants 1 and 2 have been jointly enjoying the plaint schedule properties. However, the names of plaintiff and defendants 1 and 2 are recorded as pattadars and possessors in respect of the three equal extents in the suit schedule property and accordingly three separate pattadar passbooks and title deeds were issued in the name of plaintiff and defendants 1 and 2. The suit schedule properties were not divided among the plaintiff and defendants 1 and 2 by metes and bounds though pattadar passbooks and title deeds were individually issued as per the mutation proceedings of the Mandal Revenue Officer(MRO), Ibrahimpatnam vide file No.B/2820/98 dated 21.01.2002. The plaintiff several times demanded the defendants 1 and 2 to effect partition but they postponed the issue. Recently, plaintiff came to know that defendant No.2 in collusion with defendant No.3, who is a stranger to their family, taking advantage of the fact that their names were noted in the revenue records in respect of the land admeasuring 2 Acres in Sy.No.214/part which is a part of the plaint schedule property, created a bogus sale deed vide document No.6631/2013 dated 16.02.2013 in favour of defendant No.4, who is the son of defendant No.2. The plaintiff is not a party to the said sale deed and the same is not binding on him. Hence the suit for partition.

d) Defendant No.4 filed written statement and others adopted the same. They denied most of the plaint averments. They admitted that the father of plaintiff and defendants 1 and 2 along with two others purchased lands and

partitioned them and suit properties fell to their father's share. However, they denied that the suit properties are still kept joint by the plaintiff and defendants 1 and 2 after the death of their parents. Their specific case is that after the death of their father, the plaintiff and defendants 1 and 2 orally partitioned the suit lands into three equal shares among themselves. Apart from the suit lands, their father also acquired lands bearing Sy.Nos.1 to 11 measuring 10 Acres situated in Tummarbowli Revenue Village, Saroornagar Mandal, Ranga Reddy District. In the oral partition, the three brothers also partitioned the lands bearing Sy.Nos.1 to 11 situated in Tummarbowli revenue village. They further pleaded that after partition, the plaintiff has sold out his entire share of lands situated at Thummabowli village by making them into plots to various persons. Similarly defendant No.1 also sold out his share of lands situated at Thummabowli village in favour of various purchasers and at present defendant No.1 is having only Ac.0-15gts. Defendant No.2 is concerned, he also sold some lands which fell to his share in favour of various persons and still he has an extent of Ac.1-20 gts of Thummabowli village. Thus the three brothers have been enjoying their respective shares by effecting sales in respect of some of the lands fell to their share. Defendant No.2 is the absolute owner of 2 Acres of land in Sy.No.214/AA and he sold the said land under an registered document No.6631/2013 in favour of defendant No.4 and said land is a part of the suit schedule property. Since the name of defendant No.3 was recorded as possessor in the revenue pahanies for some extent, defendant No.4 by paying huge amount to him obtained sale deed from defendant No.2 as well defendant No.3. After purchasing the aforesaid land,

defendant No.4 has developed the same by making it into plots after obtaining permission from Gram Panchayat, Ibrahimpatnam and sold some of the plots to various purchasers. Plaintiff without having any right, demanded defendant No.4 to provide a share but defendant No.4 refused. Hence, the plaintiff filed a mischievous suit for partition. The suit is not maintainable under law.

e) Along with the suit, plaintiff filed I.A.No.1370 of 2013 seeking interim injunction restraining the defendants from alienating the plaint schedule properties pending suit. He also filed I.A.No.1371 of 2013 seeking an injunction restraining the defendant No.4 from changing the nature of the suit schedule property which he purchased from defendants 2 and 3 pending disposal of the suit.

f) The respondents filed counter and opposed both the petitions.

g) The Trial Court after enquiry dismissed both the petitions in its common order dated 18.11.2013 on the main observation that separate pattadar pass books issued in favour of the three brothers, would show that the properties were divided among them. The Trial Court also observed that plaintiff suppressed the fact that his father was having lands in Tummabowli village and those lands were sold by them. For all those reasons, the Court held, he was not having *prima facie* case and balance of convenience in his favour.

Hence the CMAs.

4 a) **CMA No.595 of 2014**: Heard arguments of Sri Srinivas Velgapudi, learned counsel for appellant/plaintiff and Sri Mokilla Srinivas Reddy, learned counsel for respondent Nos.1, 2 and 4/defendant Nos.1, 2 and 4.

b) **CMA No.596 of 2014**: Heard arguments of Sri Srinivas Velgapudi, learned counsel for appellant/plaintiff and Sri Mokilla Srinivas Reddy, learned counsel for respondent No.4/defendant No.4. Respondents 1 to 3 are not necessary parties to this appeal vide cause title.

5) Severely fulminating the common order of the Trial Court, learned counsel for appellant/plaintiff argued that the properties acquired by the late father of plaintiff and defendants 1 and 2 are still joint and there is no written partition deed effecting division. The oral partition conveniently pleaded by the defendants is a myth and the defendants tried to take advantage of the fact that separate pattadar passbooks and title deeds were issued in favour of three brothers. He vehemently argued that issuance of separate pattadar passbooks is not an indication of partition among the coparceners but it is for their convenience. The Trial Court committed grave error in placing implicit reliance on the pattadar passbooks to dismiss the petitions. On the other hand, the Land Acquisition Officer while awarding compensation in respect of the land acquired of the branch of Gurram Venkat Reddy, allotted compensation to plaintiff and defendants 1 and 2 jointly and equally, which shows their joint status. He further argued that the Trial Court also failed to consider the fact that plaintiff and defendants 1 and 2 jointly executed GPA in favour of Pabbathi Reddy Sathi Reddy in respect of the land in Sy.Nos.1, 2, 9 to 10

admeasuring 2 Acres situated at Tummabowli village, which would manifest that they were joint owners of the same. Had there been a division in their status, they would not have executed joint GPA. He thus prayed to allow the appeals.

6) Per contra, while supporting the common order of the Trial Court, learned counsel for respondents/defendants argued that issuance of a separate pattadar passbooks is a proof positive of the oral partition effected among the three brothers but not for the sake of convenience as pleaded by the plaintiff. He thus prayed to dismiss the appeals.

7) In the light of above rival arguments, the points for determination in both the appeals are:

- i) *Whether the common order passed by the Trial Court is factually and legally correct?*
- ii) *To what relief?*

8) **POINT No.1:** The admitted facts are that plaint schedule properties belong to the family of plaintiff and defendants 1 and 2 as they were purchased by their late father G.Venkat Reddy along with S.Malla Reddy and T. Linga Reddy. It is also an admitted fact that during partition among the three co-sharers, the plaint schedule properties fell to the share of plaintiff's father G. Venkat Reddy. Now the crux of the case is, according to plaintiff, the plaint schedule properties are kept joint and there was no division by metes and bounds. Whereas the contention of defendants is that after the death of their father, the three brothers orally partitioned the plaint

schedule properties and they have been enjoying them separately in their individual right and pattadar passbooks have also been obtained pursuant to the partition. The land admeasuring 2 Acres in Sy.No.214/part fell to the share of defendant No.2 and as such he along with defendant No.3, whose name is shown in the revenue records as possessor, sold the same to defendant No.4. Plaintiff has absolutely no right over the said land.

9) We gave anxious consideration to the respective contentions and perused the record. The plaintiff produced proceedings No.B/2820/1998 dated 21.01.2002 of MRO, Ibrahimpatnam which shows, the plaintiff and defendants filed an application under Section 5 of Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short "the Act") before the then MRO, Ibrahimpatnam for validating the unregistered deed dated 06.05.1965 executed among the three shareholders i.e, Gurram Venkat Reddy, Sama Malla Reddy, Tekula Linga Reddy for partition of the lands jointly purchased by them. Gurram Venkat Reddy got half share in the lands and out of remaining half share, $\frac{2}{3}$ rd was allotted to Sama Malla Reddy and $\frac{1}{3}$ rd to Tekula Linga Reddy. The MRO in his proceedings No.ROR/383/91 dated 11.11.1991 passed orders validating the aforesaid unregistered agreement. The same was quashed by the RDO, East Division, Ranga Reddy District in an appeal filed by the branch of late Linga Reddy and remanded the matter to MRO. In turn the MRO in his order dated 21.02.2002 passed an order holding that the memorandum of agreement can be lawfully treated for consideration to decide the shares. The original shares allotted to each party as aforesaid was upheld. Thus

the sons of G.Venkat Reddy i.e, plaintiff and defendants 1 and 2 got Ac.44-29gts to their share, which are the plaint schedule properties. However, this document is not an indicative of whether partition was subsequently effected or not among the three brothers i.e, plaintiff and defendants 1 and 2. On the other hand, this document would only show how the branch of Gurram Venkat Reddy got the plaint schedule properties.

10) Then we perused the copy of the title deed and pattadar passbook issued by MRO, Ibrahimpatnam in favour of plaintiff. These documents would show that out of plaint schedule properties, 1/3rd extent in each survey number is shown as the holding of the plaintiff. At the same time a perusal of the title deed and pattadar passbook filed by defendant No.2 would show that 1/3rd extent of the plaint schedule properties in respect of each survey number is shown as his holding. Since title deeds and pattadar passbooks are issued in favour of each brother, it is a *prima facie* indication of the partition effected by the three brothers as rightly contended by defendants.

a) In this regard, Sections 4 and 5 of the Act are germane for consideration. Section 4 of the Act would say that any person acquires a land by way of succession, survivorship, inheritance, partition, Government patta, decree of a Court or otherwise any right as owner, pattadar, mortgagee, occupant or tenant of a land, he shall intimate in writing of acquisition of such right to the concerned MRO within ninety days from the date of such acquisition. The Registering Officer is also

vested with the duty to inform to MRO about the transactions in land such as sale, mortgage, gift, lease or otherwise. Then Section 5 of the Act lays down that on receipt of the information referred to in Section 4, the MRO shall determine as to whether and if so in what manner, the record of rights may be amended in consequence thereof and shall carryout the amendment in the record of rights. Therefore, the title deeds and pattadar passbooks produced by either side, *prima facie*, suggests an inference that the plaintiff and defendants 1 and 2 submitted to the concerned MRO that they have partitioned their ancestral properties and after due enquiry, the MRO issued separate pattadar pass books and title deeds in accordance with Section 5 of the Act. Though it is argued on behalf of plaintiff that separate title deeds and pattadar passbooks were issued, only for convenience sake, he did not produce the copy of the application submitted by three brothers to the MRO requesting for issuance of individual title deeds and pattadar pass books for such alleged convenience. Therefore, the said contention has no conviction.

11) It is to be noted that the plaintiff much harped about the GPA said to have been executed by three brothers in favour of P.Sathi Reddy to buttress his contention that since the three brothers were joint and not partitioned their properties, they executed a joint GPA to manage one of their joint family properties. We perused the copy of the GPA dated 18.11.1991 executed by the plaintiff and defendants 1 and 2 in favour of one Pabbathi Reddy Sathi Reddy to deal with the non-agricultural vacant land admeasuring 2 Acres covered by Sy.Nos.1,2, 9 & 10. It must be noted that executants only mentioned that they are the sole and absolute owners and

peaceful possessors of the said property. There are no particulars in this document to the effect that the subject property is a joint family property. Therefore, from this document it is difficult to infer their joint status, particularly, when the individual title deeds and pattadar passbooks depict different connotation. Though the plaintiff claimed that the LAO acquired their joint family properties for laying Krishna Drinking Water Project and granted compensation to three brothers in equal moieties, which would show that suit properties are joint family properties, he has not produced the land acquisition award or other proceedings before the Trial Court. Hence, he cannot raise such contention now. Thus as rightly observed by the Trial Court, the plaintiff failed to establish that the plaint schedule properties are still joint. The Trial Court rightly dismissed both the petitions as having found no *prima facie* case and balance of convenience in his favour.

12) Accordingly, both the appeals are dismissed. However, it is made clear that the Trial Court shall dispose of the suit on merits without being influenced by any of the observations made in this common judgment. No costs.

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

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 11.09.2017

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