

HON'BLE SRI Dr. JUSTICE SHAMEEM AKTHER

Appeal Suit No.938 of 1998

JUDGMENT :

The plaintiffs in O.S.No.303 of 1988 on the file of the Court of the First Additional Subordinate Judge, Ranga Reddy District at Saroornagar, are appellants herein and they filed this appeal aggrieved by the judgment and decree passed in the above suit on 6.7.1996

2. The suit was one filed for partition of suit schedule properties and separate possession.

3. The allegations in the plaint go to show that the defendant No.1 is the father of the plaintiffs. The defendant No.2 is the son of paternal uncle of defendant No.1. The father of defendant No.1 and father of defendant No.2 are real brothers. The father of defendant No.1 and father of defendant No.2 were the members of joint family and died in joint status leaving the suit schedule properties. Defendant Nos.1 and 2 are having half share each in the suit schedule properties, as the suit schedule properties are ancestral properties. The plaintiffs 1 to 5 are entitled to claim $1/6^{\text{th}}$ share each in the share of their father defendant No.1. Defendant Nos.1 and 2 with *mala fide* intention refused for partition and to give shares of the plaintiffs. Therefore, the plaintiffs are constrained to file the suit for partition. Since defendant Nos.1 and 2 have been trying to introduce defendant Nos.3 to 16 into suit schedule properties, defendant Nos.3 to 16 are made parties to the suit. The

plaintiffs claimed 1/6th share each, in the half share of defendant No.1 in the suit schedule properties. Hence, the suit.

4. The defendant Nos.1 and 8 remained *ex parte*.

5. The defendant No.2 filed a written statement contending that during the life-time of the father of the defendant No.2, there was a partition of the properties between the defendant No.1 and the father of the defendant No.2 on 6th May, 1958. The defendants 1 and 2 and other share holders alienated their lands to different persons and those lands are in possession of 3rd persons. The lands bearing Sy.Nos.103, 104, 105, 110, 112 and 113, totally admeasuring Ac.109.16 guntas of village Kandukur belonged to defendants 1 and 2 and other shareholders. All the shareholders have alienated these lands under registered sale deeds, as such they are not available for partition. The defendant No.2, being the surplus land holder under the provisions of Land Reforms (Ceiling on Agricultural Holding) Act, had surrendered Sy.Nos.291, 289, 173, 172, 288 and 285 admeasuring Ac.19.48 cents of (V) Gudur. The remaining area shown in the blue colour in annexed site plan was alienated by the defendant No.2 to different persons under registered sale deeds. The defendant No.1 is also a surplus land holder and the Government has taken over 16 acres from the defendant No.1 and assigned the same to defendants 3 to 16 and several others. The suit is filed in collusion with defendant No.1 in order to cause obstructions in the use and enjoyment of the assignees. Therefore, the defendant No.2 pleaded for dismissal of the suit.

6. The defendant No.4 filed a written statement, which was adopted by defendant Nos.6, 7 and 9 to 16. The contents of the written statement filed

by the defendant No.4 are that the Government has taken over land covered by Sy.Nos.159, 161, 168, 169, 170, 171, 172, 173, 174, 177 to 182, 184, 186 and 227 from the defendant No.1 as surplus lands and assigned to defendant Nos. 3 to 16 and others on 20.4.79. The defendant No.1 filed several litigations and got filed litigation through others, but all were decided against him. Having lost all remedies, the defendant No.1 got filed the suit in order to deprive the rights of the assignees. The assignees are in possession of their respective assigned lands. Therefore, these defendants pleaded for dismissal of the suit.

7. On the basis of the above pleadings, the following issues have been framed by the trial Court:

- 1) Whether the suit schedule properties are not partitioned among the parties ?
- 2) Whether the plaintiffs are entitled to 1/6th share in the suit properties as prayed for ?

8. On behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A.1 to A.3 were marked. On behalf of the defendants, DW.1 was examined and no documents were marked.

9. After considering the material evidence on record, the trial Court dismissed the suit, but without costs. Aggrieved by the said judgment, the present appeal is filed by the plaintiffs.

10. The learned counsel appearing on behalf of the appellants contended that the trial Court erred in holding that there was already partition in the year 1958 and the respondent Nos.1 and 2 are in separate ownership and possession of the suit schedule property and further, it wrongly held that

3rd parties have entered into the suit schedule property on alleged alienation made by respondents 1 and 2 and further contended that the trial Court has not appreciated all the facts and circumstances and erred in dismissing the suit filed by the appellants for partition and grant of 1/6th share to each of the appellants and ultimately, prayed to set aside the judgment and decree under appeal and decree the suit as prayed for.

11. On the other hand, the learned counsel appearing on behalf of the respondents contended that there is ample evidence on record, particularly admissions of P.W.1 that there was already a partition between the respondent No.1 and the father of the respondent No.2 and respondents 1 and 2 have also filed their separate declaration before the Land Reforms Ceiling Authority and the surplus land surrendered by respondents 1 and 2 was given to the landless poor persons i.e., respondents 3 to 16. There is ample record to believe that there was a partition in the year 1958. The trial Court has appreciated all the facts and circumstances and determined the issues not proved and justified in dismissing the suit of the appellants and ultimately, prayed to dismiss the appeal with costs.

12. In view of contentions put-forth by both sides, the following points are come up for determination :

- (i) Whether the appellants are entitled for partition of the suit schedule property ?
- (ii) Whether the appellants are entitled for 1/6th share each in the suit schedule property ?
- (iii) To what result ?

13. **Point No.1 :**

The 1st plaintiff had deposed as P.W.1 before the trial Court. He has admitted all the averments of the written statement. Respondent No.1, father of the appellants, remained *ex parte* through out. Further, the 1st appellant – P.W.1 admitted that his father and respondent No.2 sold some of the suit lands, which fell to their shares, claiming as exclusive owners and possessors. Further, P.W.1 admitted that respondent Nos.1 and 2 were living separately since long time cultivating their property fallen to their share separately. The other details mentioned in the written statement were also admitted by P.W.1 during cross-examination. There is record to disclose that respondents 1 and 2 were having substantial lands along with their agnates. Some of the lands were sold by respondents/Defendant Nos.1 and 2 and their other shareholders under registered sale deeds. The land sold under registered sale deeds are also made part and parcel of the suit schedule property. There is also specific admission that respondent No.1 is behind the filing of the suit and remaining *ex parte*. Respondent No.1 did not support the case of the appellants by entering the witness box or by filing written statement. There is also record to show that the surplus lands surrendered by respondents 1 and 2 were distributed to the landless poor persons i.e., respondents 3 to 16. There is record to show that there is already partition as contended by respondent No.2 in the year 1958. The appellants did not file a single document to show that there is joint ownership and possession over the suit schedule properties. There is no dispute that the suit schedule properties are not the ancestral properties of respondents 1 and 2. There is no evidence to believe that the suit schedule properties are in joint ownership and possession of the respondent Nos.1 and

2. The trial Court has analysed the entire evidence on record i.e., evidence of P.W.1 and P.W.2 and documents Exs.A1 to A3 and evidence of D.W.1 and held that there was already a partition and appellants are not entitled for partition of the suit schedule property, assigning valid reasons. In view of the facts and circumstances of this case, no other opinion can be substituted except confirming the finding recorded by the trial Court. Point No.1 is answered accordingly.

14. Point Nos.2 and 3 :

There is no evidence on record to believe that the suit schedule properties are in joint ownership and possession of respondents 1 and 2 and the appellants are not entitled for 1/6th share each as prayed for. Point No.2 is answered accordingly.

15. In the result, the Appeal Suit is dismissed confirming the judgment and decree, dated 6.7.1996 passed in O.S.No.303 of 1988 on the file of the Court of the First Additional Subordinate Judge, Ranga Reddy District at Saroornagar. No order as to costs.

16. Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

Dr. JUSTICE SHAMEEM AKTHER

24th March, 2017

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