

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**S.A.No.38 of 2017****ORDER:**

This Second Appeal is preferred against the judgment and decree dt.29-04-2016 in A.S.No.19 of 2014 of the III Additional District Judge, Bhimavaram reversing the judgment and decree dt.20-12-2013 in O.S.No.618 of 2006 of the Principal Junior Civil Judge, Bhimavaram.

2. The appellants are plaintiffs in the suit. They along with 2nd respondent-Vemala Chanti, belong to the same family. Appellant Nos.1 to 4 are brothers and appellant No.5 and Vemala Chanti are their sisters.

3. They jointly filed the suit O.S.No.618 of 2006 along with Vemala Chanti for declaration that they are absolute owners of the plaint schedule property and for recovery of possession of the plaint schedule site after evicting 1st respondent therefrom the plaint schedule property.

4. In the plaint, they alleged that all of them became joint owners after the death of their father Yarakayya and that 1st respondent's father was only a licensee from their father, that his possession is permissive, but he unauthorizedly continued in possession of the property even though they had not permitted him to reside therein.

5. The 1st respondent filed the Written Statement opposing the suit claim. The 5th plaintiff in the suit/2nd respondent herein Vemala Chanti, who is the sister of the appellants, admittedly died on 23-04-2011 when the suit was pending. But her legal representatives were not brought on record by the appellants. In fact, the Court itself was not informed about the death of Vemala Chanti. It proceeded to decide the suit and gave a decree in favour of the appellants.

6. Challenging the said judgment and decree, the 1st respondent filed A.S.No.19 of 2014 before the III Additional District Judge, Bhimavaram. The said appeal was allowed on the ground that the 5th plaintiff in the suit Vemala Chanti had died on 23-04-2011, that the suit therefore abated as against her and since the appellants and the deceased 5th plaintiff jointly made a claim, the decree obtained by the appellants is a nullity. The lower appellate Court relied upon the judgment in **B.C.Harinarayanamma and others Vs. V.Narasimha and others**¹ wherein this Court held that if a suit is filed for declaration of title and recovery of possession of the suit schedule property from the defendants and if pending suit, one of the plaintiffs (who is a co-owner) dies, then the suit stands dismissed by the abatement caused by the death of the said co-owner if his legal representatives are not brought on record; and the decree for declaration in favour of the surviving co-owners cannot be sustained

¹ 2001 (4) ALT 580

because it would be in conflict between the dismissing pf the suit on account of abatement caused by one of the plaintiffs.

7. Assailing the same, this Second Appeal is filed.

8. Learned counsel for the appellants sought to rely upon judgment in **S.Amarjit Singh Kalra (dead) by L.Rs. and others Vs. Smt. Pramod Gupta (dead) by L.Rs. and others**² and contends that the view taken by the lower appellate Court is not correct.

9. In the said judgment, the Constitution Bench dealt with the issue as to in what circumstances, an appeal could be dismissed when several parties are joined together in the said appeal and one of them dies. The principles laid down therein are summed up in para-35 as under:

“(1) Wherever the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights the decree passed by the Court thereon is to be viewed in substance as the combination of several decrees in favour of the one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having similar rights contesting the claims against them.

(2) Whenever different and distinct claims of more than one are sought to be vindicated in one single proceedings as the one now before us, under the Land Acquisition Act or in similar nature of proceedings and/or claims in assertion of individual rights of parties are clubbed, consolidated and dealt with together by the Courts concerned and a single judgment or decree has been passed, it should be treated as a mere combination of several decrees in favour of or

² AIR 2003 S.C. 2588 (1)

against one or more of the parties and not as joint and inseparable decrees.

(3) The mere fact that the claims or rights asserted or sought to be vindicated by more than one are similar or identical in nature or by joining together of more than one of such claimants of a particular nature, by itself would not be sufficient in law to treat them as joint claims, so as to render the judgment or decree passed thereon a joint and inseverable one.

(4) The question as to whether in a given case the decree is joint and inseverable or joint and severable or separable has to be decided, for the purposes of abatement or dismissal of the entire appeal as not being properly and duly constituted or rendered incompetent for being further proceeded with, requires to be determined only with reference to the fact as to whether the judgment/decreed passed in the proceedings vis-a-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees. For that reason, a decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other.”

10. In the present case, all the appellants as well as the deceased Vemala Chanti claim the property through their father Yarakayya. Thus, their claim was not distinct, separate or independent individually and in fact it was based on joint title as co-owners who succeeded to the estate of their father.

11. Once the 5th plaintiff Vemala Chanti died, the suit abated since her legal representatives were not added as parties in the suit within the time prescribed by law. So the suit stood dismissed as far as she is concerned.

12. Since her right in the property is joint along with the appellants, the dismissal of the suit as against her would result in the

dismissal of the suit as against of the appellants also. Otherwise there would be conflicting judgments.

13. This aspect has been dealt with in **B.C.Harinarayanamma and others** (1 supra) and this Court had rightly taken a view that if the suit against one of the plaintiffs, who is a co-owner, stands dismissed by abatement due to his death, and if the suit is decreed for declaration of title and possession in favour of surviving co-owners/plaintiffs, it leads to conflict of judgments. Therefore, the judgment of the trial Court cannot be sustained.

14. I accordingly held that the decision in **S.Amarjit Singh Kalra (dead) by L.Rs. and others** (2 supra) does not help the appellants and that the case of the appellants is governed by the decision in **B.C.Harinarayanamma and others** (1 supra). I therefore, do not find any substantial question of law arising for consideration in the Second Appeal.

15. Accordingly, the Second Appeal is dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-03-2017

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