

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

S.A.No.649 OF 2017

ORDER

This Second Appeal is directed against judgment and decree dated 18.07.2011 passed in A.S.No.157 of 2010 by the II Additional District Judge, Ongole, Prakasam District, confirming the decree and judgment dated 6.7.2010 passed in O.S.No.391 of 2006 by the Principal Senior Civil Judge, Ongole.

The defendant is the appellant and respondents 1 to 3 are the plaintiffs.

The plaintiffs filed O.S.No.391 of 2006 seeking partition of the plaint schedule properties into 7 equal shares; to allot one such share to each of the plaintiffs and defendants 1 to 4 and to deliver separate possession thereof.

The 1st plaintiff is the mother. Plaintiffs 2 & 3 and defendants 2 to 4 are daughters of the 1st plaintiff. The 1st defendant is the son of Boddu Guravaiah through his first wife. It is stated that the father of Guravaiah by name Boddu Pitchaiah had two wives. The plaintiffs and defendants constituted members of Hindu joint family. The plaint schedule items 1 to 8 are self acquired properties of B.Guravaiah, who died intestate about 7 years back. After the death of Guravaiah, the 1st defendant is managing the

properties. He purchased item Nos.9 and 10 out of the income from item Nos.1 to 8. All the documents stand in the name of the 1st defendant and he is enjoying the usufructs from the properties without giving any share to the plaintiffs or defendants 2 to 4, though they are joint family properties.

The defendants 2 to 4 remained *ex parte* and the 1st defendant filed written statement stating that during the life time of Guravaiah, he divided some of the items of the schedule properties and delivered shares to the respective shareholders. Items 1 and 2 fell to the share of the 1st defendant, portion of item No.3 fell to the share of the 1st plaintiff, the remaining portion fell to the share of the 2nd plaintiff and another portion of item No.3 fell to the share of the 2nd defendant. The 1st plaintiff and 2nd defendant are living in their respective portions in item No.3. Item No.4 was given to the 3rd plaintiff, which is now in possession of the 1st plaintiff, who let out the same and receiving the rents. It is further stated that he is providing maintenance to the 1st plaintiff by giving 6 bags of paddy every year. Item No.5 belongs to one boddu Nagaiah, who is elder brother of the paternal grand father of the 1st defendant. B.Nagaiah had a son by name Ramulu. The 1st defendant is maintaining the son of Nagaiah. Thus, Nagaiah and Ramulu gave item No.5

to the 1st defendant. Item No.6 is the self acquired property of the 1st defendant. Item Nos.7 and 8 belong to the family and the plaintiffs and the defendants are entitled to take their respective shares. The plaintiffs and other defendants are also liable to pay the debts jointly. It is further stated that item No.9 belongs to one Sayamma, who executed a will on 10.2.1997, in favour of the 1st defendant.

Based on the pleadings, the trial Court framed the following issues:

1. Whether the partition of schedule property took place already in the past?
2. Whether the plaintiff is entitled for any share if so to how much share?
3. Whether the plaintiff is entitled for separate possession?
4. To what relief?

With regard to issues 2 and 3, the trial Court held that items 1 to 8 of the plaint schedule properties are the properties of late Guravaiah and there was no prior partition as pleaded by the 1st defendant. Since the plaintiffs and the defendants are his class-I heirs, the trial Court passed a decree on 6.7.2010 in respect of item Nos.1 to 8 of plaint schedule property for partition of the same into 7 equal shares and allotment of one such share to each of the plaintiffs and

defendants & Items 9 and 10 are the exclusive properties of the 1st defendant.

The 1st defendant preferred an appeal being A.S.No.157 of 2010 before the II Additional District Judge, Ongole, who dismissed the same on 18.07.2011 by confirming the decree and judgment passed by the Principal Senior Civil Judge, Ongole. The learned Judge recorded that the age of the 1st defendant was 15 years when the properties was purchased and agreed with the finding recorded by the lower Court that the properties belonged to Boddu Guravaiah. With regard to prior partition and oral partition also, the lower appellate Court confirmed the said finding as the 1st defendant failed to adduce any evidence in support of the same. Challenging the same, the present Second Appeal is filed by the defendant.

In view of the concurrent finding of fact recorded by both the Courts below with regard to the nature of the items 1 to 8, and disbelieving the version of the 1st defendant with regard to the prior partition, this Court sees no ground to entertain the second appeal as no question of law much less substantial question of law is involved in the present second appeal.

Accordingly, the Second Appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

27th October, 2017
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