

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

SECOND APPEAL No.97 of 2018

09.02.2018

Between:

Pattan Sardar Khan and others

..Appellants

and

Narsipatnam Mosque Committee (Registered Society),
represented by its Secretary, Narsipatnam

..Respondent

Counsel for the appellants: Mr.G.U.R.C.Prasad

Counsel for the respondent: --

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The concurrent judgments of the Principal Junior Civil Judge, Narsipatnam in O.S.No.325 of 1997 and that of the Senior Civil Judge, Narsipatnam, in A.S.No.7 of 2009 are assailed in this Second Appeal by the plaintiffs in the suit.

2. The parties are hereinafter referred to as they are arrayed in the suit.

3. The case of the plaintiffs, in short, is that on 05.11.1947, one Shaik Hussain Saheb executed a registered settlement deed, settling his undivided half share in plaint 'A' schedule property in favour of the father of plaintiff No.1 and he accepted the gift; that subsequently, in the year 1950, the father of plaintiff No.1, in the presence of said Shaik Hussain Saheb, partitioned plaint 'A' schedule property; that plaint 'B' schedule property fell to the share of the father of plaintiff No.1 and that during his life time, himself and plaintiff No.1 used to enjoy plaint 'B' schedule property and that the said property was leased out to one Konathala Subbarao, Toleti Apparao and his wife Lakshmi and also Namburi Apparao to raise temporary sheds for doing business and plaintiff No.1 used to collect the rents. That the father of plaintiff No.1 died in the year 1960 and after his death, plaintiff No.1 has been enjoying plaint 'B' schedule property and that the plaintiffs lost original settlement deed, dated 05.11.1947. That the site situated towards west of plaint 'B' schedule property is Peerla Panga site, which is the remaining part of plaint 'A' schedule property, and that the plaintiffs got

right over plaint 'A' schedule property by virtue of registered settlement deed, dated 05.11.1947, as the father of plaintiff No.1 was having undivided half share in plaint 'A' schedule property. That as plaintiff No.1 fell ill, in the year 1964, he authorized the Secretary of the defendant mosque committee to collect the rents from the shop owners who were doing business in plaint 'B' schedule property, on his behalf and that the defendant mosque committee was acting as an agent of plaintiff No.1 and settling the accounts with the plaintiffs every year and obtaining receipts from plaintiff No.1. That as the Secretary of the defendant mosque committee started acting against the interests of the plaintiffs, they filed the aforementioned suit for declaration of title and partition among the plaintiffs.

4. On behalf of the defendant mosque committee, a written statement was filed, wherein it was alleged that the suit was engineered by one Sarasa Appalakonda – the Power of Attorney Holder of the plaintiffs; that late Konathala Subbarao and the plaintiffs' Power of Attorney Holder belonged to Gavara caste and are related to each other; that the defendant mosque committee evicted Konathala people i.e., Konathala Subbarao, Tholeti Apparao and his wife – Laxmi and Namburi Apparao in execution of the decrees obtained against them in O.S.Nos.275 of 1976 (325/72), 84/1980 and 313 of 1980 and that after prolonged litigation, the property could be delivered to the defendant mosque committee only on 05.05.1994. That in order to defeat the interests of the defendant mosque committee, the aforesaid persons filed O.S.No.27 of 1981 on the file of the trial Court claiming a pathway

across plaint 'A' schedule property and obtained decree on 22.04.1992 and that A.S.No.32 of 1992 preferred by the defendant mosque committee was pending in the Senior Civil Judge's Court, Chodavaram, at the time of filing of the written statement. That after overcoming the several bottlenecks created by the aforesaid three persons, the defendant mosque committee could recover possession pending realization of decree costs and *mesne* profits etc.; that plaint 'B' schedule property is imaginary and false; that there was no division of plaint 'A' schedule property at any time and that the southern boundary of plaint 'B' schedule property is inconsistent with that of plaint 'A' schedule property, which is actually Peerla Panja site of the defendant mosque committee of which the paternal grandfather of plaintiff No.1 was Mutawalli and after his death, his elder son – the father of plaintiff No.1 acted as Mutawalli; that the entire plaint 'A' schedule property was being used as Peerla Panja site from the times immemorial; that one Shaik Makdum Saheb filed O.S.No.92 of 1918 (92 of 1928) on the file of the then Yellamanchili District Munsif Court against the paternal grandfather of plaintiff No.1 and obtained a decree for partition of his alleged half share; that after prolonged litigation and after an unsuccessful appeal – A.S.No.47 of 1943 by the paternal grandfather of plaintiff No.1, the partition decree was confirmed; that after the death of the paternal grandfather of plaintiff No.1 and Makdum Saheb, at the intervention of the elders, Makdum Saheb's son – Hussain Saheb agreed to surrender his undivided share to Peerla Panja and executed registered gift deed, dated 05.11.1947, in favour of the then Mutawalli – the father

of plaintiff No.1 in his capacity as Mutawalli and not in his individual capacity, specifically mentioning therein that it was given for carrying out his religious duties as Mutawalli and it does not contemplate partitioning and separate enjoyment by the father of plaintiff No.1 and that it was never intended to confer individual rights to him as is evident from its recitals themselves.

5. Based on the respective pleadings of the parties, the trial Court framed the following issues for consideration.

- “1. Whether there is any partition of-A schedule property in the year 1950 in the presence of Hussain Saheb?
2. Whether the plaintiff is entitled to declaration and injunction as prayed for?
3. To what relief?”

On behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A-1 to A-3 were marked. On behalf of the defendant, D.W.1 was examined and Exs.B-1 to B-33 were marked. The affidavit of plaintiff No.1 was marked as Ex.C-1. On appreciation of the oral and documentary evidence, the trial Court held all the issues against the plaintiffs and in favour of the defendant mosque committee.

6. On issue No.1, the trial Court held that the evidence on record would clearly show that not a single document was filed by the plaintiffs to establish that ‘A’ schedule property was partitioned in the year 1950 in the presence of Hussain Saheb. The trial Court further held that the plaintiffs failed to prove that plaint ‘B’ schedule property was allotted to

the share of the father of plaintiff No.1 in 1950 by the paternal grandfather of plaintiff No.1.

7. As regards issued No.2, the trial Court held as under.

“16. The next point is about the contention raised by the defendant Committee with regard to the schedule property. The documents Exs.B.19, B.20, B.24, B.25, B.27, B.30, B.32, B.33 and B.34 are perused. D.W.1 also deposed about the stand taken by the defendant to the effect that the plaintiff schedule property is the grant given to the Mosque. The plaintiffs could not produce any account or independent evidence to establish that the defendant committee collected the rents from the tenants as an agent of plaintiff. It is not known why the plaintiffs entrusted the collection of rents from the tenants to the Mosque Committee if it is their personal property. On the other hand, it is in the evidence of D.W.1 that the 1st plaintiff acted as Muttavalli who removed the post of Muttavalli of charges of misappropriation and thereafter disposed of Writ Petition, the Management entrusted to the defendant Mosque committee on 9.3.1964. The record reveals that the 1st plaintiff acted as Muttavalli against whom misappropriation of funds were alleged. Ex.B.22 dated 9.3.1964 reveals that 1st plaintiff Muttavalli was directed to handover the properties of Mosque committee after dispose of Writ filed by him. Ex.A.19 (sic – ‘Ex.B.19’) is the A.P. Gazettee Notification Notified the plaintiff schedule property was Wakf property. The objections raised by the plaintiff that Ex.B.19 cannot be accepted is not tenable because the Gazette Notification issued by the Government, by virtue of Ex.B.22 the management was taken by the Committee.

17. Moreover Ex.B.20 is the Survey Report of the Commissioner reveals that the suit property is Mosque property. Exs.B.21 and B.23 are the copies of Judgment in O.S.No.123/1994 and the said suit is filed by the tenants against the defendant-Committee regarding the plaintiff schedule

property. Exs.B.24 to B.33 are the documents which reveals the committee is dealing with Mosque property by receiving proceedings from A.P.Wakf Board, Lease Deed executed in favour of tenants, Notice from the Tahsildar, Narsipatnam to the 1st plaintiff directing him to appear before the Tahsildar and also letter from the Wakf Board to arrange for delivery of Mosque property from the 1st plaintiff.

18. Moreover Ex.B.2 to B.17 are the documents showing that the defendant filed suits for eviction against the tenants and obtained delivery of property through process of law. The documentary evidence produced on behalf of defendants clearly establish the fact that the defendant Committee managing the properties of the Mosque after the 1st plaintiff removed as Muttawalli from 1964 onwards and the matter was suppressed by the Wakf Board. To prove their case the 2nd plaintiff examined as P.W.1. According to his admissions he was not born on the date of partition, i.e., 1950 and he was aged about 7 years on the date when the entrustment of collecting rents was made by his father to the Mosque committee. He categorically admitted that he came to know about the facts of the case through his father i.e., 1st plaintiff. It reveals that he has no personal knowledge about the facts of the case. He further admitted that he has no knowledge about the survey number, boundaries of the suit schedule property. His evidence is not accepted. Concerned to the evidence of P.W.2 he is G.P.A. Holder. He corroborated the evidence of P.W.1.”

The trial Court, accordingly, held both the issues in favour of the defendant mosque committee. The lower appellate Court has confirmed the judgment of the trial Court.

8. After hearing the learned counsel for the appellants/plaintiffs and carefully perusing the reasons assigned by both the Courts below,

I am of the opinion that the findings were rendered by the Courts below based on the appreciation of the oral and documentary evidence and the appellants/plaintiffs have failed to show that those findings suffer from any perversity. Therefore, no substantial question of law arises for consideration in this second appeal.

9. The Second Appeal is, accordingly, dismissed.

10. As a sequel to dismissal of the Second Appeal, I.A.No.1 of 2018 filed by the appellants for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

09th February, 2018
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