

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AS.No.255 of 1999

J U D G M E N T:

This appeal is filed questioning the judgment and decree dated 21.08.1998 in OS.No.8 of 1989 by the Senior Civil Judge, Bobbili.

The suit was filed by the plaintiff for partition, possession and mesne profits.

For the sake of convenience, the parties are referred to as they are arrayed in the suit only.

The contents of the plaint are that the plaintiff and defendant are children of late Gode Ramamurthy and Manikyamma. Late Ramamurthy was a big business man and he acquired both movable and immovable properties including gold and cash mentioned in the schedule; all are his self acquired properties. He died about 25 years back leaving behind his wife, plaintiff and defendant as Class-I heirs as per the Hindu Succession Act. Plaintiff was married and she gave birth to four children. After the demise of her husband, she, late Manikyamma and the defendant used to be in joint enjoyment of all the schedule mentioned properties. The defendant used to manage the family properties and continued the Kirana business which his late father Ramamurthy used to do. There were litigations between defendant and late Manikyamma and she executed registered settlement deed in favour of the plaintiff on

07.04.1980 for her share in Lot-I of the plaint schedule property. The plaintiff is in joint possession of the same along with the defendant. Manikyamma died in August, 1988; the plaintiff and defendant succeeded to her 1/3rd share in Lot-II and III of the plaint schedule under the provisions of the Hindu Succession Act. The plaintiff is entitled to 2/3rd share in Lot-I of plaint schedule properties by virtue of the registered settlement deed and half share in Lot-II and Lot-III of the schedule mentioned properties. The defendant refused for partition and the suit is filed for partition and possession and for mesne profits.

Defendant filed his written statement contending that his father late Ramamurthy is a small Kirana merchant; that he acquired properties from his father after his death in May, 1956. Gode Ramamurthy died 33 years back and not 25 years back. The Hindu Succession Act was enacted and came into force only after the death of his father Ramamurthy. As per old Hindu Law, he and his mother are the only heirs of his father late Gode Ramamurthy. His mother Manikyamma had half share in the family properties. The defendant had remaining shares. He earned money and constructed the present building which is item-I and Lot-I by his own exertion. Item-III of the plaint schedule was vacant site purchased by wife of the defendant with her gold. Item-III is not the family property of the defendant. Neither the defendant nor his mother had any share in item-III. The defendant's mother Manikyamma filed a suit in OS.No.30 of

1979 for partition of the alleged family properties. The plaintiff is the defendant No.2 in the above suit and remained *ex-parte*. There was compromise between the defendant and his mother in OS.No.30 of 1979 and Manikyamma executed a relinquishment deed in favour of the defendant relinquishing her half share in the family properties in favour of the defendant. The relinquishment deed is supported by consideration. Subsequently, plaintiff's mother Manikyamma died and the defendant became the sole owner of the property. The alleged settlement deed in favour of the plaintiff is not true. Manikyamma had no share in the family properties by the time of her death in view of the relinquishment deed. The plaintiff has no right to demand a share in the family properties.

Later, defendant also filed an additional written statement stating that the Lot-II of the plaint schedule is in respect of agricultural lands which are ancestral in character owned by late Gode Ramamurthy. Ramamurthy died in May, 1956. Under the Hindu Women's Right to Property Act 1956, defendant No.1 is entitled to half share and his mother late Manikyamma was entitled to half share in the Lot-II properties. By virtue of the relinquishment deed dated 14.10.1980 executed by late Manikyamma, defendant No.1 became the absolute owner of the entire Lot-II properties. Lot-II lands are recorded in the name of defendant No.1 in the revenue records. Manikyamma filed a suit for maintenance against the defendant. Another suit in OS.No.30 of 1979 was

also filed and during the pendency of the suits, Manikyamma executed a settlement deed dated 04.04.1980 due to fraud; that Manikyamma also executed a cancellation deed dated 13.10.1980 cancelling the earlier settlement deed dated 04.04.1980. Hence, the suit has to be dismissed.

Plaintiff has filed rejoinder stating that his father died subsequent to the passing of the Hindu Succession Act. The plaintiff, defendant and her late mother Manikyamma have succeeded to his properties as Class-I heirs under the provisions of the Hindu Succession Act. The plaint schedule properties are the self acquired properties of late Ramamurthy. The settlement deed dated 04.04.1980 is valid and joint possession was also given. The cancellation deed is not valid under law as it is executed under undue influence and coercion. Hence, the suit has to be decreed.

On the basis of the above pleadings, the following issues were settled for trial:

- (1) Whether the late Ramamurthy died in May, 1956 as alleged in written statement?
- (2) Whether the plaintiff is class-I heir to late Ramamurthy?
- (3) Whether the plaint Item No.1 is self acquired property of defendant?
- (4) Whether the item No.3 was acquired by the wife of the defendant?

- (5) Whether the relinquishment deed alleged to have been executed by late Manikyamma is true?
- (6) Whether the settlement deed dated 07.04.1980 is true and valid?
- (7) Whether the plaintiff is entitled to share in the suit properties as prayed for?
- (8) Whether the properties mentioned in Lot-III of the plaint schedule are true?
- (9) Whether item No.3 is a family property and liable for partition?
- (10) Whether the plaintiff is the heir of late Gode Ramamurthy and whether plaintiff succeeded to any share in the properties of late Ramamurthy?
- (11) Whether Gode Ramamurthy died after Hindu Succession Act came into force?
- (12) What is the share to which the plaintiff is entitled and to which of the properties?
- (13) To what relief?

An additional issue was framed on 01.08.1995:

- (1) Whether the plaintiff has got a share in Lot-II of the plaint schedule property?

The parties went to trial. On behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A.1 to A.4 were marked. For the defendant, DWs.1 and 2 were examined and Exs.B.1 to B.5 were marked. In addition, Ex.C.1 was marked. After trial, the Lower Court passed the impugned judgment by which a preliminary decree was passed for 2/3rd share of

items I and II of Lot-I and for ½ share in Lot-II. The claim of item III in Lot-I and Lot-III movable properties was dismissed. Questioning the same, the present appeal is filed.

This Court has heard Smt. M.Bhaskara Lakshmi, learned Senior Counsel for the appellant and Sri P.Durga Prasad, learned counsel for the respondent.

As can be seen from the grounds of appeal, the essential point that arises for consideration in this case is the date of death of Sri Gode Ramamurthy. In the grounds of appeal, ground Nos.5, 6, 8, 9 and 10 are based on this very same issue. The first issue that was settled for trial in the Lower Court is whether Sri G.Ramamurthy died in May, 1956 as alleged in the written statement. As a consequence, the next issue that was framed was whether the plaintiff is class-I heir.

Logically also this point is to be decided first. The date of death of G.Ramamurthy will determine the status of the plaintiff. If it is held that Ramamurthy died after passing of the Hindu Succession Act, the plaintiff, the defendant and their late mother Manikyamma would succeed to the property as class-I heirs under the Hindu Succession Act.

A lot of time was concentrated by the learned counsels both in the Lower Court and in this Court upon the date of death of Sri Ramamurthy. The bulk of the case law relied upon by the learned senior counsel for the appellant was on the date of death and the value to be attached to the death certificate (Ex.B.1). In the plaint, it is mentioned that

Ramamurthy died about 25 years prior to the plaint. Plaint was filed in 1989 which means that he died in 1964. In addition to this, there is also a dispute about the place of his death. PW.1 while being examined on 14.02.1996 stated that Ramamurthy died in the hospital and he was brought to Bobbili from Visakhapatnam but she also states that her father died in Bobbili and she informed the death to the Bobbili Municipality also.

DW.1 who is the main witness examined for the defendants states that his father died at King George Hospital, Visakhapatnam and Ex.B.1 is the certificate of death. In his cross-examination on 21.04.1997, however, he states that his father died at the front portion of plot No.1 house and he passed away due to cancer. As far as the contents of Ex.B.1 are concerned, the witness clearly admits that he is not aware of the same and that his son got the medical certificate.

Ex.B.1 is thus the critical document in this case. It is a certificate of death dated 01.03.1997. According to this document, one G.Ramamurthy died in the hospital on 10.05.1956. Therefore, this document purports to certify a death that occurred 40 years prior to 1997. Both the learned counsels very vehemently argued on the contents, the proof and the value to be attached to this document etc. Even the Lower Court spent a lot of time and effort in analysing the

effect of this document. Learned counsel for the appellant cited the following judgments in support of her case:

- (1) **Suraj Narain v. Seth Jhabbu Lal**¹
- (2) **Madamanchi Ramappa v. Muthaluru Bojjappa**²
- (3) **Harpal Singh v. State of Himachal Pradesh**³
- (4) **Union of India v. Ibrahim Uddin**⁴
- (5) **Gopi Chand Arya v. Sm.Bedamo Kuer**⁵
- (6) **Hussaini Khatoon (smt.) v. Madresat-Un-Noor-Li-Thafeesul-Quran**⁶
- (7) **Amarnath v. Deputy Director of Consolidation, Kanpur**⁷
- (8) **K.A.Khader v. Rajamma John Madathil**⁸
- (9) **Kedarnath Lal (dead) by his LRs v. Sheonarain**⁹
- (10) **Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker**¹⁰
- (11) **Sri Bhimeshwara Swami varu temple v. Pedapudi Krishna Muyrthi**¹¹
- (12) **Mohinder Singh v. State of Haryana**¹²
- (13) **Banarsi Dass v. Brig.Maharaja Sukhjit Singh**¹³
- (14) **Adapala Subbaiah v. Shaik Hasan Sabeb**¹⁴
- (15) **Kundurthi Ranganadham v. Puli Ragaiah**¹⁵

Judgements 1 to 5 referred to supra are on the evidentiary value of a public document like the Ex.B.1 in this case. The learned Senior Counsel argued that there is a presumption in favour of Ex.B.1 and that the respondents did

¹ (A.I.R (31) 1944 Allahabad 114

² (AIR 1963 SC 1633)

³ (1981) SCC 560

⁴ (2012) 8 SCC 148

⁵ AIR 1966 Patna 231

⁶ 2018(2) HLT 672

⁷ AIR 1985 Allahabad 163

⁸ AIR 1994 Kerala 122

⁹ AIR 1970 SC 1717

¹⁰ (1997) 2 SCC 255

¹¹ (1973) 2 SCC 261

¹² (1974) 4 SCC 285

¹³ (1998) 2 SCC 81

¹⁴ 2007 (4) Alt 541

¹⁵ 2004 (4) Alt 209

not discharge the burden on them to dispute the entry in Ex.B.1.

Learned counsel for the respondent on the other hand pointed out the inconsistencies in the evidence and said that the statement of the son (DW.1) that his father died at Bobbili in the front portion of the house in Lot No.I cannot be overlooked. He also points out that PW.1 in the course of her cross-examination clearly stated that her father died in Bobbili and death was also informed to Bobbili Municipality. He states that DW.1, who produced this document, has no knowledge where he got the document from i.e., the hospital or the Municipal Corporation and that he also gives contradictory evidence about an event as important as his father's place and time of death.

Therefore, the first and primary question that falls for consideration in this case is whether Ex.B.1 and its contents can be treated as proved and relied upon. As pointed out by the learned counsel for the respondent, the death supposedly occurred in 1956 and the certificate was issued in 1997. Learned counsel points out that nobody concerned with the document was examined. He points out that the supporting entries like the original information given of the death, the entry made in the register of births and deaths etc., should be proved. He also contends that mere filing of the document is not proof of contents of the document particularly in view of the cross-examination wherein DW.1 clearly admitted that he

has no knowledge of the contents of the document. The counsel relied on DW.1 cross-examination on 26.04.1997 where he deposed as follows:

“I got Ex.B.1 from K.G.H, Visakhapatnam. I have not filed any application before the Superintendent of KGH, Visakhapatnam for death extract of my father. My eldest son Ramachandrarao brought the death extract of my father from K.G Hospital, Visakhapatnam. I am not personally aware the grant of Ex.B.1 but my eldest son know about it.”

Learned counsel points out that all in the light of the cross-examinations and the admissions therein, Ex.B.1 cannot be presumed to be correct. He points out that Ex.B.1 is issued by Municipal Corporation of Visakhapatnam. It is not issued by K.G.Hospital, Visakhapatnam. The witness states that he got Ex.B.1 from the K.G.Hospital, Visakhapatnam. Later he states that his eldest son Ramachandrarao brought the extract from K.G. Hospital, Visakhapatnam. Ultimately, the witness agrees that he is not personally aware about Ex.B.1. A suggestion was also made that this document was obtained with a false date to suit the case but the same was denied. Therefore, learned counsel argues that the contents of Ex.B.1 cannot be taken to be proved.

Time and again the Hon'ble Supreme Court of India clearly held that mere marking of a document is not proof of the contents of the document. If the truth of the contents of

the document itself is an issue, somebody connected with the document has to be examined. In ***Narbada Devi Gupta v. Birendra Kumar Jaiswal***¹⁶, Hon'ble Supreme Court of India considered the earlier decision of ***Ramji Dayawala and Sons (P) Ltd. v. Invest Import***¹⁷ and held as follows:

“16. Reliance is heavily placed on behalf of the appellant on the case of ***Ramji Dayawala & Sons (P) Ltd., (supra)***. The legal position is not in dispute that mere production and marking of a document as exhibit by the Court cannot be held, to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'. The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the Court.”

Similarly, ***Dharmarajan v. Valliammal***¹⁸ a certificate Ex.A.8 issued by the Tahsildar was negated on the ground that nobody connected with the document was examined. The other important decision on this topic is ***Om Prakash***

¹⁶ 2003 (8) SCC 745

¹⁷ 1981 (1) SCC 80

¹⁸ 2008 (2) SC 741

Berlia v. Unit Trust of India¹⁹, wherein it was held as follows:

“13. It will have been noticed that the production of certified copies under the provisions of S. 63 is a means of leading secondary evidence. Secondary evidence can, obviously, be led only what the documents states, not as to whether what the documents states is true. Under S. 65(e), secondary evidence may be given when the original is a public documents within the meaning of S. 74 and only a certified copy of the public documents is admissible. Secondary evidence of a public documents so led only proves what the documents states, no more. In other words, he who seeks to prove a public documents is relieved of the obligation to produce the original. He can produce instead a certified copy. All other requirements he must still comply with.”

In this view of the matter, when the entire case turns round the date of death of G.Ramamurthy and the witness does not have knowledge of the contents of the document, this Court is of the opinion that the evidence introduced is not enough to prove the contents of the document. In addition, the Lower Court rightly noticed that there was no mention about the actual date of death of late G.Ramamurthy in the first written statement filed in 1989. Even the second written statement that was filed in 1994 did not mention the exact date of the death of G.Ramamurthy. Only during the course of the evidence, a certificate was filed giving the date of

¹⁹ AIR 1983 Bom., 1

death. In addition, as noticed by this Court below, no Officer concerned with the document was examined. No documents were summoned either from the K.G.Hospital, Visakhapatnam or from the Municipal Corporation to prove the correctness of the entries made in Ex.B.1. The witness who marked this document admitted that his son got the document from the hospital and it is clear that he did not apply for the same. The treatment that the deceased took, the medical prescriptions or evidence of similar nature would have helped the Court to decide about the place of death in view of the contradictory stands in the oral evidence. The prime witness for the defendants is DW.1 and he states that his father suffered from cancer and was bedridden for 5-6 years before his death. He also states that his father died due to cancer in the house (Lot-I) and that the fact of the death was informed in Bobbili Municipality and his signature was taken in the register also. Thus, there is a lot of ambiguity about the date of death which is not satisfactorily proved or explained. The fact remains that the death, as per the certificate, occurred in May, 1956 and the certificate is dated March, 1997. The gap of 40 years is too long for anybody to rely on this document alone to decide the date of death of the father. The contradictions in the oral evidence of the place of death also are clearly noticeable. Therefore, in view of the ambiguity and also the cross-examination, this Court is of the opinion that this was a case where a primary record should have been produced to prove the death.

In addition to all the above, the Lower Court also noticed that Ex.A.1 is a copy of the plaint filed in OS.No.30 of 1979 by the wife of Ramamurthy. That plaint also states that her husband died about 20 years ago. His wife is the most qualified person to speak about the date of death. If in her plaint she states that her husband died 20 years ago, this is a fact of that cannot be overlooked.

This Court is of the opinion that the Lower Court rightly considered all these issues when it discussed the documents that are filed. The witnesses from the Municipal Corporation, Visakhapatnam or King George Hospital, Visakhapatnam should have been summoned and examined to prove the contents of this document. The officials of the Bobbili Municipality should have been summoned to get the registers as DW.1 says he signed on the same. Nothing was done in this direction by the party.

The document Ex.B.1 is also a post litigation document as it bears the date 1997. The suit is filed in 1989. As per the settled case law, which need not be repeated, the documents which are dated subsequent to the suit cannot be accepted as true unless they are clearly and categorically proved. The element of bias or of preparation of the document with the litigation in mind cannot be ruled out. Therefore, for all these reasons, this Court holds that Ex.B.1 has not been validly proved. This Court must concur with the findings of the Lower Court on Ex.B.1 and hold that it is not

validly proved. The finding of the lower Court on issue No.1 is confirmed.

In view of this finding on this crucial issue, the rest of the issues decided by the lower Court are also held to be correct. The allocations of the shares, the refusal by the lower Court to allot certain items etc., also follow as a logical consequence of this finding. In fact, during the submissions nothing much was argued about the rest of the matters by both the learned counsels. As far as issue No.2 is concerned as Ex. B1 is not proved and the other evidence suggests otherwise; it is confirmed that the father's death is after the Hindu Succession Act, 1956 was enacted. Hence, the plaintiff is a Class-I heir.

Issue No.3-PW.1, admitted that neither did she file the sale deed of this item nor did she file any tax receipt to show that it was mutated in her name. DW.1, could not file any proof to show that it was acquired by him personally. This Court must, in the circumstances concur with the finding of the lower Court that it is the property of the defendant's father. Hence, issue No.3 is held in favour of the plaintiff.

Issue Nos.5 & 6- As rightly held by the lower Court, the doctrine of *Lis Pendens* does not totally invalidate a transaction but makes it subject to the result of the suit. In the case on hand the settlement deed is held not to be affected by the same. It is held to be valid. The sequence of events and the conclusion of the Court below about the

compromise and the relinquishment is also upheld by this Court. Ex B.3 is held to be invalid.

Issue No.8 - The existence of the movable property itself is not proved. Hence the same is held against the plaintiff.

Issue No.9- This Court concurs with the finding of the lower Courts.

Issue No.10 – This Court concurs with the finding of the lower Courts. Late Gode Ramamurthy died after the Hindu Succession Act, 1956 was enacted. Plaintiff is a Class- I heir of the Late Gode Ramamurthy.

Issue No.11- The findings in issue No.10 are clear. This issue, as a corollary, is decided in favour of the plaintiff.

Issue Nos.7, 12 and addition issues dated 01.08.1995, the findings in the concluding para are the answer to all these issues.

Hence a preliminary decree is passed without costs for 2/3rd share in items I and II of Lot-I of the plaint schedule and ½ share in Lot-II landed property. The plaintiff is also entitled for mesne profits. The plaintiff's claim for item III of Lot-I and Lot-III movable properties, is dismissed without costs.

Hence, the appeal is dismissed; confirming the findings of the lower Court. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 31.12.2018
KLP

