

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.880 of 2018

JUDGMENT:

This appeal is filed under Section 100 of Civil Procedure Code challenging the judgment and decree dated 16.11.2017 in A.S.No.5 of 2017 on the file of the Court of I Additional District Judge, Mahabubnagar, wherein and whereby the decree and judgment dated 17.01.2017 in O.S.No.72 of 2008 on the file of the Court of Principal Senior Civil Judge, Mahabubnagar, dismissing the suit filed by the plaintiff for partition, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the second appeal are briefly as follows:

The plaintiff is the paternal grand daughter of one Chennaiah, who is the absolute owner of plaint 'A' and 'B' schedule properties. Late Chennaiah had three sons, by name Komaraiah, Yellaiah and Narsaiah. The plaintiff is the daughter of Narsaiah. Late Chennaiah handed over plaint 'B' schedule property to the defendants. The plaintiff is entitled for half share in the suit schedule property. The defendants did not come forward for partition of the suit schedule property. Hence, the plaintiff is constrained to file suit for partition of the suit

schedule property. The defendants filed written statement denying all the averments made in the plaint *inter alia* contending that the plaintiff is not the paternal grand daughter of Chennaiah and daughter of Narsaiah. Defendants 1 and 2 are the legal heirs of Yellaiah, who is the son of late Chennaiah. Late Narsaiah married one Sayamma, who predeceased him issueless. Hence, the suit may be dismissed. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled to partition and separate possession as prayed for?
2. To what relief?

4. To substantiate the stand, before the trial Court, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A20 were marked. To demolish the case of the plaintiff, the first defendant examined himself as D.W.1 and no documents were marked.

5. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff failed to prove that she is the daughter of Narsaiah and grand daughter of Chennaiah and dismissed the suit. Feeling aggrieved by the judgment and decree dated 17.01.2017 in O.S.No.72 of 2008, the plaintiff preferred A.S.No.5 of 2017. The first appellate Court after reappraising the oral and documentary evidence arrived at a conclusion that the plaintiff is not the daughter of Narsaiah and grand daughter of Chennaiah, therefore, she is not entitled to seek partition of the suit schedule property, consequently,

dismissed the appeal. The unsuccessful plaintiff preferred the present second appeal.

6. Learned counsel for the appellant submitted that the findings recorded by the Courts below are perverse, therefore, it is a fit case to allow the appeal.

7. It is not in dispute that originally the suit schedule property belongs to one Chennaiah. The said Chennaiah had three sons, by name Komaraiah, Yellaiah and Narsaiah. It is the case of the plaintiff that she is the daughter of Narsaiah and grand daughter of Chennaiah, therefore, she is entitled for share in the suit schedule property. The burden of proof lies on the person, who asserts a fact and desires the Court to adjudicate the same in view of Section 101 of Evidence Act. In order to succeed the suit, the plaintiff has to establish that she is the daughter of Narsaiah and grand daughter of Chennaiah. To establish her relationship with Narsaiah and Chennaiah, the plaintiff mainly placed reliance on Exs.A10 and A11. Ex.A10 is the dependency certificate issued by Mandal Revenue Officer, Addakal. Ex.A11 is the panchanama conducted by Mandal Revenue Inspector. It is needless to say that the Court cannot declare the status of a party basing on the revenue records. The plaintiff has taken different stands at different stages of proceedings. For the reasons best known to her, the plaintiff did not choose to examine the Mandal Revenue Officer of Addakal and Mandal Revenue Inspector to prove the recitals of Ex.A10 and A11 respectively. Suffice it to say mere marking of

documents would not amount to proof of the same. The Court cannot place reliance on the revenue records without examining the concerned officials. The trial Court discarded these two documents. The appellate Court also discarded these two documents for non-examination of the concerned officials. The Court below did not commit any error while discarding Exs.A10 and A11.

8. As rightly pointed out by the learned counsel for the appellant, while exercising the jurisdiction under Section 100 CPC, this Court can set aside the findings recorded by the Courts below, if they are perverse. If the findings of the Courts below are based on no evidence or based on evidence, which is not legally admissible, then those findings can be termed as perverse. In the instant case, the findings recorded by the trial Court as well as the appellate Court are based on evidence, much less legally admissible evidence. The Courts below have assigned reasons, much less cogent and valid reasons to its findings.

9. In view of the above discussion, I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the Courts below are perverse and liable to be set aside. This Court cannot admit the second appeals in a routine manner without framing the substantial question of law. The points urged by the appellant are of purely disputed questions of fact. The first appellate Court is the fact finding

final Court. This Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below.

10. As observed earlier, the findings recorded by the Courts below are sustainable both on facts and in law. There is no question of law, much less substantial question of law involved in this appeal. Hence, the appeal is liable to be dismissed.

11. In the result, the second appeal is dismissed at the stage of admission. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

20th January 2018
Rns

T.SUNIL CHOWDARY, J

