

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

S.A.No.1115 of 2017

ORDER:

This Second Appeal is filed under Section 100 CPC challenging the judgment and decree dt.19-01-2017 in A.S.No.23 of 2009 of the District Judge, Chittoor, partly allowing the same and modifying the judgment and decree dt.15-12-2008 in O.S.No.178 of 1997 of the Additional Senior Civil Judge, Chittoor.

Plea of the appellant/plaintiff in Trial court

2. The appellant herein is plaintiff in the suit. He filed the suit for declaration of his title to the plaint schedule properties and for perpetual injunction restraining the respondents from interfering with his possession and enjoyment of the said properties.

3. The appellant contends that his father Venkatrayudu Naidu obtained the plaint schedule properties in a partition which occurred in 1960 with the other co-sharers; and after the death of his father in 1989, he was in exclusive possession and enjoyment thereof along with his mother and sisters. He contended that his grandfather is one Abbayai, who is the second son of V.Chengaiah; that the 1st son of Chengaiah is Pedda Chinnabbai, whose son was 5th defendant; that the said Chengaiah is the brother-in-law of Mothukuri Venktrayudu who is his brother-in-law; and they constituted a composite family with Mothukuri Venktrayudu as head.

4. He contended that both Mothukuri Venktrayudu and Chengaiah jointly acquired the plaint schedule lands and other lands; that the properties stood in the name of Mothukuri Venktrayudu; that defendant Nos.1 to 4 are legal heirs of the said Mothukuri Venktrayudu; that Mothukuri Venktrayudu during his lifetime executed a settlement deed dt.25-09-1930 (Ex.A-1) gifting away the properties equally in favour of his own children as well as the sons of Chengaiah; that Ex.A-1 was in the nature of a family arrangement; that there was no division of the properties by metes and bounds till 1960; and in 1960, there was a partition as mentioned above among the co-sharers and surviving descendants as per Ex.A-1 settlement deed by metes and bounds. He contended that defendant Nos.7 to 9 were proclaiming that they purchased the lands from the other defendants and they were interfering with the appellant's possession over the schedule lands, that defendant Nos.7 to 9 were henchmen of defendant Nos.1 to 6 and therefore he filed the suit.

Pleas of defendants in Trial Court

5. Defendant Nos.3, 4, 7 and 10 filed the Written Statement. They admitted Ex.A-1 settlement deed dt.25-09-1930. They contended that the properties were being enjoyed jointly till 1959 and not till 1960 as alleged. According to them, on the advise of elders, all the parties executed Ex.B-1, Kattu Muchilika on 11-07-1959 dividing the suit properties and they have been enjoying their respective shares as per the allotment under the said Kattu

Muchilika. They denied that there was any oral partition as alleged by the plaintiff in 1960. They contended that Ex.B-1, though not registered, is admissible in law and is binding on the parties. They also contended that they purchased the property covered by F schedule of Ex.B-2 under registered sale deed dt.16-07-1963 from 2nd defendant and in that registered document, Ex.B-1 dt.11-07-1959 was referred to and all the sharers under Ex.B-1 attested Ex.B-2. They also stated that 1st defendant sold property, which fell to her share under Ex.B-1, through Ex.B-13 dt.06-07-1972 to 5th defendant and 2nd defendant attested the sale deed. It is further pleaded that 5th defendant sold the same property to 7th defendant under Ex.B-14 dt.07-07-1973 and the father of 6th defendant attested the said sale deed. It is contended that since 1st defendant sold her property which fell to her share under Ex.B-1, this was not included in Ex.B-15 partition deed dt.09-08-1989 between 1st defendant and her sister's children and this is also evidence to show that Ex.B-1 was acted upon. They alleged that the plaintiff conveniently suppressed Ex.B-1 and registered a false plea of oral partition in 1960 and that the sharers have felt need of division as joint enjoyment was not convenient for all the parties and appellant's endeavour is to grab right in the bore wells sunk by 3rd defendant and other defendants. It is also alleged that there is collusion between the appellant and 1st defendant and the boundaries shown in the plaint schedule are misleading.

6. The 4th defendant filed Written Statement admitting Ex.A-1 settlement deed dt.25-09-1930 executed by Mothukuri Venktrayudu and contended that acting upon Ex.B-1 Kattu Muchalika dt.11-07-1959, A schedule property was allotted to him. He contended that he obtained pattadar pass book and title deed in respect of A schedule property of Ex.B-1 after mutation was effected in the revenue records and he is enjoying the said land.

7. The 7th defendant filed Written Statement stating that Ex.A-1's execution was true but he denied that it was acted upon. He admitted Ex.B-1 Kattu Muchalika dt.11-07-1959. He alleged that 1st defendant got E schedule property under Ex.B-1 towards her husband's share and since her husband died, she was made a party to Ex.B-1 and she was enjoying the same since 1959. It is contended that under Ex.B-13, 1st defendant sold property which fell to her share in Ex.B-1 to 5th defendant and 5th defendant in-turn sold it to 7th defendant under Ex.B-14 dt.07-07-1973. He also claimed that pattadar pass book and title deed were issued to him.

8. The 10th defendant filed Written Statement stating that his mother is the younger sister of 1st defendant, and since 1st defendant died issueless and her husband also predeceased her and 1st defendant was under his care and custody, the 1st defendant executed a Will dt.29-04-2002 bequeathing her share to him and she later died on 30-06-2002.

The issues framed in the Trial court

9. Based on these pleadings, two issues were framed by the trial Court:

“1. Whether the plaintiff is entitled to declaration and consequential permanent injunction as prayed for?

2. To what relief?”

10. Before the trial Court, the appellant/plaintiff examined himself as P.W.1 and marked Exs.A-1 to A-7. The respondents/defendants examined D.Ws.1 to 8 and marked Exs.B-1 to B-19. Exs.C-1 to C-6 and Exs.X-1 to X-20 were also marked.

The judgment and decree of Trial court

11. By judgment and decree dt.15-12-2008, the trial Court decreed the suit and declared that the appellant was the owner and possessor of the suit schedule properties and was entitled for permanent injunction against the respondents/defendants or persons claiming through them, and the latter are restrained from interfering with the appellant's peaceful possession and enjoyment of the suit schedule properties.

12. The trial Court relied on the statement of 3rd defendant (D.W.1) that the plaintiff's father got the suit schedule properties in the oral partition of 1960 and held that this statement binds the other defendants also. It however held that under Ex.B-1 Kattu Muchilika dt.11-07-1959, the plaintiff's father got only Ac.2.17 cts; that there

was no equal distribution of properties in all the survey numbers under Ex.B-1; there was no explanation from the defendants why plaintiff's father was given only Ac.2.17 cts as per Ex.B-1, and so the plaintiff's claim for Ac.2.91 cts is valid as per the oral partition of 1960.

13. It also held that the attesters or scribe of Ex.B-1 have not been examined and parties to Ex.B-1 were also not examined. It also held that Ex.B-1 is a document which created the rights and therefore requires registration and since it was unregistered, it is inadmissible in evidence. It therefore decreed the suit.

The decision in the A.S

14. The defendants/respondents have preferred the appeal A.S.No.23 of 2009 before the District Judge, Chittoor.

15. The lower Appellate Court partly allowed the appeal and confined the relief of declaration and consequential permanent injunction to the appellant only in respect of Ac.2.17 cts in Sy. No.1094 which was shown as plot No.3 in Ex.B-3 rough sketch filed by the respondents/defendants, but not in respect of the entire suit schedule property of extent Ac.2.94 ½ cts comprised in four different survey numbers.

16. It came to this conclusion by reversing the finding of the trial Court as regards the Ex.B-1 Kattu Muchalika dt.11-07-1959 after referring to its contents. It held that the recitals therein would show

that the properties were divided into A to F schedules and property covered by each schedule was allotted to each sharer and all sharers have been in possession and enjoyment of the respective shares; and that the document recites that the partition took place earlier and evidencing the same it was reduced into writing. It noted that since stamp duty was inadequate, it was impounded and appropriate stamp duty was collected, and that the recitals therein indicate that rights in the respective shares were conferred on the parties thereto not for the first time. It held that it was a mere list of properties allotted in the partition and not 'an instrument of partition' and did not require registration.

17. It held that evidence of D.Ws.1 to 4 coupled with evidence of D.Ws.6 to 8 and documents Ex.B-1 to B-4, Exs.X-1 to X-20 and Exs.C-1 to C-6 show that oral partition had taken place in 1959 among all the co-owners and that subsequently it was reduced into writing in Ex.B-1. It held that later sale of properties also took place. It therefore held that the oral partition of 1960 pleaded by the appellant was not true.

18. It held that therefore the appellant/plaintiff is entitled to seek for declaration of title and for consequential permanent injunction only in respect of share allotted to his father under Ex.B-1 i.e. Ac.2.17 cts in Sy. No.1094 which is shown as plot No.3 in Ex.B-3. To that extent, the trial Court judgment was set aside.

19. Assailing the same, this Second Appeal is preferred.

Contentions of Counsel for Appellant

20. Learned counsel for the appellant contended that the lower appellate Court was not right in eschewing from consideration the admission of 3rd defendant as D.W.1 that the suit schedule lands fell to the share of the appellant's father at the oral partition in 1960 especially when the admission was precise and unambiguous. He also contended that lower appellate Court erred in holding that Ex.B-1, though unregistered, could be relied upon.

21. I have noted the contentions of the learned counsel for the appellant.

22. Under Section 100 CPC, it is well settled that the High Court would not interfere with findings of fact made on appreciation of evidence unless such findings of fact are perverse or based on no evidence. It is also necessary that there should be a substantial question of law arising for consideration in the Second Appeal for it to be admitted and considered.

23. From the facts narrated above, it is clear that while the appellant's contention was that there was an oral partition in 1960 in which his father was given Ac.2.94 ½ cts in four different survey numbers, the respondents' contention is that under Ex.B-1 Kattu Muchalika on 11-07-1959, the appellant's father got only Ac.2.17 cts in Sy. No.1094.

24. Ex.B-1 was held to be inadmissible in evidence by the trial Court but the lower appellate Court after considering its recitals and taking note of the fact that stamp duty as per the Indian Stamp Act, 1899 has been impounded and collected along with the penalty, came to the conclusion that the document does not require registration because it only is a list of properties allotted at a partition, and that it was written after the division of properties into A & F schedules. It may be that D.W.1 i.e. 3rd defendant did make a statement in his deposition that appellant's father got 1/6th share in the suit schedule properties. But the fact remains that the said witness was deposing more than 37 years after the alleged partition in 1959 and it is possible that his recollection of evidence was not correct. It is important to note that division as it happened under Ex.B-1 is corroborated by evidence of D.Ws.1 to 4, D.Ws.6 to 8, Exs.B-1 to B-19, Exs.X-1 to X-20 and Exs.C-1 to C-6 according to the lower appellate Court.

25. In my considered opinion, this appreciation of evidence by the lower appellate Court has not been shown by the appellant to be either perverse or unreasonable in any manner.

26. In this view of the matter, I do not find any reason to interfere with the finding of fact recorded by the lower appellate Court regarding validity and binding nature of Ex.B-1 and its finding disbelieving the oral partition of 1960 pleaded by the appellant.

27. Accordingly, the Second Appeal is dismissed at the admission stage. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-03-2018

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