

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.158 OF 2013

JUDGMENT:

This Second Appeal is filed, by the unsuccessful plaintiffs, under Section 100 of C.P.C., assailing the judgment and decree dated 22.12.2010 passed in A.S.No.106 of 2008 on the file of the Court of the II Additional District Judge, Ranga Reddy District at L.B.Nagar, wherein and whereby the judgment and decree dated 25.03.2008 passed in O.S.No.1278 of 2003 on the file of the Court of the VI Additional Senior Civil Judge, Fast Track Court at Medchal, Ranga Reddy District, dismissing the suit filed by the plaintiffs for partition of the suit schedule property, 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, in nutshell, are as follows:

The suit schedule property originally belongs to the grandfather of the plaintiffs and first defendant. The father of the plaintiffs by name K.Nagaiah @ Nagi Reddy is having 20th share of undivided portion in Survey Nos.621, 622, 623, 624, 625, 633, 634, 635, 638 and 639 admeasuring Ac.9.31 guntas, Ac.10.31 guntas, Ac.11.01 guntas, Ac.11.33 guntas, Ac.19.16 guntas, Ac.18.00 guntas, Ac.10.29 guntas, Ac.16.10 guntas and Ac.17.17 guntas respectively. Out of which, the plaintiffs are having a right in an extent of Ac.6.33 guntas in the above survey numbers. The plaintiffs' father is having an extent of Ac.20.10 guntas of land.

The plaintiffs' father has given separate land to the plaintiffs and their brothers excluding these survey numbers and suit property. The plaintiffs, K.Mallaiah, K.Sathaiah and K.Kistaiah entered into a family settlement deed on 11.12.1976 to the extent of Ac.6.33 guntas out of the above survey numbers. The first defendant without the consent of other family members sold the property to the second defendant. The plaintiffs names are mutated in the revenue records individually in the pahanies from 1969-70 onwards. The plaintiffs are enjoying the property jointly. Hence, the suit.

4. The first defendant filed written statement denying all the averments made in the plaint *inter alia* contending that the suit schedule property is not the joint family property. The plaintiffs are not having any manner of right to seek the relief of partition. The individual holdings are clearly mentioned in the revenue records after conducting due enquiry under the provisions of the A.P. Record of Rights and Pattadar Pass Book Act. The Revenue Divisional Officer and Mandal Revenue Officer issued pattadar passbooks and title deeds in the name of first defendant. The suit schedule property is mutated in the name of the first defendant, who is the absolute owner of the suit schedule property. Hence, the suit is liable to be dismissed. The second defendant adopted the written statement filed by the first defendant.

5. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the suit property is the ancestral property?
2. Whether there is a previous family settlement dated 11.12.1976?

3. Whether the plaintiffs are entitled to two shares in the suit property?

4. To what relief?

6. Before the trial Court, on behalf of the plaintiffs, PW.1 was examined and Exs.A.1 to A.31 were marked. On behalf of the defendants, DWs.1 to 3 were examined and Exs.B.1 to B.12 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiffs failed to establish that the suit schedule property is the ancestral joint family property and consequently, dismissed the suit.

8. Feeling aggrieved by the judgment and decree of the trial Court dated 25.03.2008 passed in O.S.No.1278 of 2003, the plaintiffs preferred A.S.No.106 of 2008 on the file of the Court of the II Additional District Judge, Ranga Reddy District at L.B.Nagar. The first appellate Court, after reappraising the oral and documentary evidence available on record, arrived at a conclusion that the plaintiffs failed to establish that the suit schedule property is the ancestral property of their family and consequently, dismissed the appeal. Hence, the unsuccessful plaintiffs preferred the present second appeal.

9. Heard the learned counsel for the appellants-plaintiffs and learned counsel for the respondents-defendants.

10. This Court carefully perused the grounds of appeal. In the grounds of appeal, learned counsel for the appellants has not formulated the substantial question of law.

11. The question of law that arise for consideration is:

“Whether the findings recorded by the Courts below are perverse?”

12. It is the case of the plaintiffs that the suit schedule property originally belongs to their grandfather. There is no mention in the plaint that the father of the plaintiffs purchased the suit schedule property in the year 1956. A perusal of the pleadings indicates that the plaintiffs filed the suit asserting that the suit schedule property is the ancestral property of their family. It is the case of the first defendant that he is the absolute owner of the suit schedule property. It is not in dispute that the first defendant sold the suit schedule property in favour of the second defendant under a registered sale deed dated 11.05.2003-Ex.B.5. The fact remains that the first defendant sold the property in favour of the second defendant prior to filing of the suit. Exs.A.3 to A.29 are the pahanies. There is no mention in these pahanies that late Nagaiah purchased the property along with 16 others on 03.03.1958.

13. A perusal of the record reveals that the concerned Mandal Revenue Officer, after conducting a due enquiry, issued a pattadar passbook-Ex.B.1 and title deed book-Ex.B.2 in favour of the first defendant. A perusal of the record further reveals that the concerned Mandal Revenue Officer, basing on Ex.B.5-sale deed, issued a title deed book-Ex.B.8 and pattadar passbook-Ex.B.9 in favour of the second defendant. In order to succeed the suit, the plaintiffs have to establish that the suit schedule property is their ancestral joint family property. It is not in dispute that the plaintiffs, first defendant and two others are sons of late Nagaiah.

Late Nagaiah is having one daughter. A perusal of the record reveals that by the time of filing of the suit, the wife of late Nagaiah was alive. It is a settled principle of law that in a suit for partition, the plaintiffs have to implead all the family members as parties to the proceedings and the properties of the family. For the reasons best known, the plaintiffs did not choose to implead their mother, two brothers and sister as parties to the suit. Even as per the testimony of PW.1, his father died 40 years back. In the plaint, the plaintiffs have taken a specific plea that they have settled the properties among the family members in the year 1974 i.e., Ex.A.1-Deed family settlement. If the family properties were partitioned in the year 1974, the question of partition once again does not arise. As per the averments made in the plaint, the plaintiffs and their brothers have been residing separately for the last 40 years. Suffice it to say, the defendant is entitled to take any number of inconsistent pleas. However, the defendant is not entitled to take mutually self-destructive pleas. In the instant case, the plaintiffs have taken mutually self-destructive pleas in the plaint. There is no clarity whether the suit schedule property is the ancestral property or self acquired property of late Nagaiah. In the plaint, it is mentioned that the properties originally belongs to their grandfather. If this plea is taken into consideration, the question of purchasing the suit schedule property by late Nagaiah in the year 1958 is highly improbable and unbelievable. During pendency of the appeal, the appellants filed I.A.No.1477 of 2010, under Order XLI Rule 27 of C.P.C., to receive the additional documents. The first appellate Court dismissed the petition on the ground that the appellants have not assigned reasons much less

cogent and valid reasons for non-filing of the documents at the earliest point of time. As observed earlier, there is no pleading in the plaint that late Nagaiah purchased the property in the year 1958. On the other hand, the documents produced by the first defendant reveals that the property stands in his name. For one reason or other, the plaintiffs did not seek cancellation of sale deed executed by the first defendant in favour of the second defendant. The trial Court, after considering the oral and documentary evidence available on record, arrived at a conclusion that the plaintiffs failed to establish that the suit schedule property is the ancestral property of the family. The first appellate Court, after reappraising the oral and documentary evidence available on record, without being influenced by the findings recorded by the trial Court, arrived at a conclusion that the plaintiffs failed to establish that the suit schedule property is the ancestral property of the family. Whether the suit schedule property is ancestral property or not is purely a **question** of fact. The finding recorded by the first appellate Court became final so far as the finding of fact is concerned. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the appellants that the findings recorded by the Courts below are perverse.

14. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, while dealing with the scope of Section 100 of C.P.C., the Hon'ble apex Court held at paragraph No.16 as follows:

¹ (2010) 13 SCC 216

“16. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC.”

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that there is no question of law much less substantial question of law is involved in this appeal. Hence, the appeal is liable to be dismissed.

16. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 26.10.2018
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