

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.681 OF 2000

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 01.02.2000 passed in A.S. No.33 of 1998 on the file of the IV Additional District Judge, Guntur (for short, 'first appellate court'), wherein the first appellate court set aside the judgment and decree dated 10.11.1997 passed in O.S. No.168 of 1985 on the file of the Additional Subordinate Judge, Guntur (for short, 'the trial court').

2. Heard the learned counsel for the appellant-plaintiff and the learned counsel for the respondents-defendants, apart from perusing the material on record.

3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court.

4. While admitting the Second Appeal, the following substantial questions of law are framed:

(1) In case of death of legatee under a Will before the Will taken into effect whether the legatee share will revert back to other legal heirs of the executant.

(2) Whether the recital in Ex.A1 that all the other properties shall devolve and D7 would mean and include the properties bequeathed to one of the legatee who predeceased executant or on her death whether general succession opens.

(3) In the absence of any documentary evidence with respect to sale transaction whether the Court can declare the title of the purchaser.

5. Learned counsel for the appellant-plaintiff would submit that on the demise of legatee before the death of the executant of the Will, the Will would not

be operative and the legatee's share would revert back to the other legal heirs of the executant; Ex.A1 is the Will deed dated 04.07.1966 filed before the trial Court, wherein the executant-China Veeraiah settled an extent of Ac.1-00 of land in favour of his daughter-Venkata Ravanamma (plaintiff) and another Ac.1-00 of land in the name of his another daughter-Kannamma and the said Kannamma pre-deceased her father-China Veeraiah; under Ex.A.1-Will, the remaining other property was given to the 7th defendant; the property bequeathed in favour of the deceased-legatee would not get transferred, which would remain with the executant of the Will; the original suit was filed by the plaintiff for partition of Acs.2-00 of land, out of which one acre is bequeathed in her favour under Ex.A.1; after death of the executant of the Will, an extent of Ac.1-00 was devolved upon the plaintiff; since Kannamma-other daughter of the executant passed away during the lifetime of her father, i.e., the executant of the Will, an extent of land Ac.1-00 of land would revert back to the executant; since the executant-China Veeraiah also passed away, the same is required to be shared by herself, the legal heirs of the second daughter-Kannamma (defendants 1 to 6) and the son of the executant (7th defendant); the trial Court after considering the entire evidence on record, rightly decreed the suit filed by the plaintiff for partition of the suit schedule property; the first appellate court without appreciating the entire evidence on record, erroneously set aside the decree and judgment passed by the trial Court; and ultimately, prayed to allow the Second Appeal as prayed for.

6. On the other hand, learned counsel for the respondents-defendants would contend that the trial Court without considering the evidence adduced by the defendants i.e., the evidence of D.Ws.1 to 4 and the documents Exs.B.1 to B.5, decreed the suit filed by the plaintiff; the first appellate court after appreciation of the entire evidence on record, rightly allowed the appeal by setting aside the judgment and decree passed by the trial Court; there is nothing

to interfere with the judgment and decree passed by the first appellate court; and ultimately, prayed to dismiss the Second Appeal.

7. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the relevant pleadings of the parties.

(a) The suit schedule property originally belonged to the plaintiff's father late Enumula China Veeraiah. He had two daughters, late Kannamma and the plaintiff and only son-7th defendant. Late China Veeraiah executed his last Will dated 04.06.1966 while bequeathing Ac.1-00 out of Acs.2-00 to the plaintiff and the other Ac.1-00 therein to the plaintiff's elder sister-Kannamma. The said Will was duly executed and registered on that date. Kannamma died intestate leaving behind her sons and daughter, who are defendants 1 to 6. The executant of the Will China Veeraiah died about 11 years back after the demise of his elder daughter-Kannamma. After demise of the executant, the Will has come into force and the plaintiff has become the absolute owner of her share i.e., Ac.1-00 of land. The plaintiff contended that having half share out of the entire suit schedule property, she is also entitled to 1/3rd share in the other Ac.1-00 of land. Thus, the plaintiff is having 4/6th share while the defendants 1 to 6 together have 1/6th share and the 7th defendant has the remaining 1/6th share out of the suit schedule property. The plaintiff and the defendants have been in joint possession and enjoyment of the suit schedule property. As there were some misunderstandings arose between the parties, the plaintiff is constrained to file the suit for partition of the suit schedule property.

(b) The 7th defendant filed written statement and the same was adopted by defendants 1 to 6 contending that as per the Will, the mother of the defendants 1 to 6 namely Kannamma has to get the southern plot of Ac.1-00 after the death of China Veeraiah in the schedule property. The said Kannamma predeceased China Veeraiah. The plaintiff sold away Ac.1-00 of land after death

of her father besides Ac.0-75 cents purchased from her mother for a valid consideration of Rs.35,600/-. Since August, 1979, there are disputes among the plaintiff, her husband and the defendants 1 to 7. The suit is not maintainable for partition of entire Acs.2-00 of land. Ultimately, prayed to dismiss the suit.

(c) The trial Court basing on the pleadings of both the parties, framed the following issues for trial:

- 1) Whether the court fee paid is correct?
- 2) Whether the suit is bad for non-joinder of parties?
- 3) Whether the plaintiff is entitled for partition of plaint schedule property and for separate possession?
- 4) To what relief?

(d) The trial Court after considering the evidence of P.W.1 and the documents Exs.A.1 to A.10 marked on behalf of the plaintiff and the evidence of D.Ws.1 to 4 and the documents Exs.B.1 to B.5 marked on behalf of the defendants, passed preliminary decree directing for partition of the suit schedule property into six equal shares and for allotment of four such shares to the plaintiff by metes and bounds. Aggrieved by the said judgment and decree dated 10.11.1997 passed by the trial Court, the defendants preferred A.S. No.33 of 1998 before the first appellate court. The first appellate court, after appreciating the entire evidence on record, was pleased to allow the appeal filed by the defendants by setting aside the judgment and decree passed by the trial Court. Challenging the said judgment and decree passed by the first appellate court, the plaintiff preferred the Second Appeal raising the substantial questions of law referred to supra.

8. The record reveals that the suit schedule property originally belonged to the plaintiff's father late Enumula China Veeraiah. He had two daughters, late Kannamma and the plaintiff and only son-7th defendant. Late China Veeraiah executed his last Will dated 04.06.1966 bequeathing Ac.1-00 out of Acs.2-00 to the plaintiff and the other Ac.1-00 to his elder daughter-Kannamma. The said Will was duly executed and registered. The plaintiff's elder sister-Kannamma predeceased China Veeraiah leaving behind her sons and daughter, who are defendants 1 to 6. The executant of the Will China Veeraiah died about 11 years back after the demise of his elder daughter-Kannamma. There is no dispute about the relationship of the parties. During pendency of the suit, the 7th defendant died and his legal representatives were brought on record as defendants 8 to 10. To prove her case, the plaintiff deposed as P.W.1 and got marked Ex.A.1-registered Will executed by father of plaintiff, Exs.A.2 to A.5-cash bills for purchase of electrical goods, Ex.A.6-bill for electricity charges, Ex.A.7-letter addressed by Electricity Department, Exs.A.8 and A.9- bills for electricity charges and Ex.A.10-registered notice issued by Agricultural Society. On behalf of the defendants, D.Ws.1 to 4 were examined and Ex.B.1-cist receipt, Ex.B.2-revenue receipt, Ex.B.3-LR receipt for F.1399 to 1401, Ex.B.4-saved copy of judgment in O.S. No.268 of 1986 and Ex.B.5-Appeal grounds in A.S. No.91 of 1996. After appreciation of entire evidence on record, the trial Court was pleased to decree the suit in favour of the plaintiff directing to divide the suit schedule property into six equal shares and allot four such shares in favour of the plaintiff by metes and bounds. However, the first appellate court set aside the judgment and decree passed by the trial Court holding that as there is recital in Ex.A.1-Will deed that the remaining land would devolve upon the 7th defendant. In case of death of the legatee, the property proposed to be bequeathed would remain with the executant of the Will. On the demise of the executant of the Will, it has to be shared as per the rights of the succession of the

parties. Therefore, the finding of the first appellate court, in reversing the judgment and decree of the trial Court, is not in consonance with Ex.A.1-Will deed. The first appellate court erred in dismissing the suit. The findings of the first appellate court are perverse. A perusal of the judgment of the trial Court would show that the first appellate court being the last court of fact had, without considering the evidence on record, erroneously reversed the well considered judgment and decree of the trial Court. Therefore, there is merit in the Second Appeal.

9. In the result, the Second Appeal is allowed setting aside the judgment and decree dated 01.02.2000 passed by the first appellate court in A.S. No.33 of 1998 and the judgment and decree dated 10.11.1997 passed by the trial Court in O.S. No.168 of 1985 is restored.

10. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.



Dr. SHAMEEM AKTHER, J

Date: 18.06.2018
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