

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

A.S.No.81 of 1999

JUDGMENT:

This appeal is filed against the judgment and decree dated 10.08.1998 in O.S.No.66 of 1993 passed by the I Additional District Judge, Ranga Reddy District at Saroornagar, Hyderabad.

The brief facts of the case are that the suit OS No.66 of 1993 was filed by one Chakrapani for partition of the properties which are described in the suit schedule and separate possession of the schedule properties after cancellation of the entries in the name of 8th defendant in the revenue records. The suit was originally filed as OS No.117 of 1983 before the Additional Senior Civil Judge, Ranga Reddy District and later it was transferred to the I Additional District Judge's Court, Ranga Reddy at Saroornagar, Hyderabad. Initially, the suit was filed with regard to item Nos.1 to 3 of the plaint schedule property to an extent of Ac.14.17 guntas and subsequently, items 4 to 13 were added by virtue of amendment.

The allegations in the plaint goes to show that the grandfather of the plaintiff was the owner and pattadar of items 1 to 3 of the suit schedule property situated at Bagh Hayathnagar and the revenue records also show

the same. The first defendant is the father of the plaintiff and the defendants 2 to 7. 8th defendant is the cousin brother of plaintiff's father. After 1950, 8th defendant in collusion with the village patwari entered his name as Shikmidar.

In 1950, 8th defendant managed to enter his name in the revenue records and the entry is liable to be cancelled. Even the entry in Kasara Pahani is liable to be corrected. When the 8th defendant has taken portion of the suit lands on lease and executed a document on 26.02.1951, he is bound to deliver possession of the same. 8th defendant did not surrender the property and also did not pay the amount and 1st defendant did not co-operate with the plaintiff for taking any action and therefore the suit is filed for partition of the suit schedule properties and for allotment of 1/8th share in the suit schedule property and for correction of the revenue records by deleting the name of 8th defendant.

The defendants 1 to 7 filed a written statement supporting the entire claim of the plaintiff in all aspects. The 8th defendant contended that the grandfather of the plaintiff by name Varadaiah has a brother by name Ramaswamy. Ramaswamy has got two sons, who is the 8th defendant and Shankaraiah. The first defendant is

the son of Varadaiah. The lands in item Nos.1 to 3 are the joint family properties of late Ramaswamy and late Varadaiah. Apart from it, the lands in Survey Nos.162 to 165, 176 and 177 were purchased by the brothers under a registered sale deed. According to the defendants, there was a division of the properties long prior to 1950 but, there was no mutation. Though half share was shown in the survey numbers to the brothers, but factually it is different on the field. The allegation that the part of the plaint schedule properties were leased out to this defendant and a lease deed was executed is totally false. The plaintiff did not seek partition of items 4 to 8 originally, since he is aware about the partition. Furthermore, there was a partition of properties between the plaintiff and defendants 1 to 7 as evidenced by a partition deed which was filed before the revenue authorities. The plaintiff has filed only a suit for partition with regard to the properties that fell to the share of the defendant omitting the lands in survey number that fell to the share of the first defendant. The plaintiff has no right to ask for partition which has already taken place. There is no joint family status and the court fee paid is not correct. The suit was filed at the instance of the first defendant to

get wrongful gain. The suit is therefore liable to be dismissed.

The defendants 9 to 13 were added as the legal representatives of 8th defendant after his death. They filed an additional written statement reiterating the pleas made by 8th defendant about the lease and pleading that without the relief for recovery of possession of the suit is bad. It was further pleaded that the properties of 8th defendant were partitioned between his sons and the brother of 8th defendant long time back. The relief claimed in the suit is barred by time. Therefore, the suit is liable to be dismissed.

The plaintiff filed a rejoinder contending that the suit for partition is not bad and the court fee paid is correct. The civil Court has got jurisdiction to entertain the suit. The land partition pleaded by 8th defendant is not true.

On the basis of the pleadings, on 10.12.1982 the following issues were framed by the lower Court for trial.

- 1) Whether the suit lands are acquired property of Chinna Varadaiah, grandfather of plaintiff?
- 2) Whether the defendant No.8 executed lease deed of the suit lands in favour of defendant No.1?
- 3) Whether the suit lands along with some other lands were purchased by late Ramaswamy and late Varadaiah in the names of defendant No.8

as alleged in para-3 of the written statement of defendant No.8?

- 4) Whether the suit lands have divided between defendant Nos.1 to 8 in the manner as shown in the written statement of 8th defendant?
- 5) Whether the name of the 8th defendant was fraudulently entered in the revenue records and the entries are required to be rectified?
- 6) Whether the plaintiff and defendants 1 to 7 had already partitioned their family properties if so whether the suit is maintainable?
- 7) Whether the plaintiff is entitled to a 1/8th share in the suit lands?
- 8) To what relief?

Additional issues were framed on 19.12.1983:

1. Whether the lease deed is a genuine document?
2. Whether the court fee paid by the plaintiff is correct, for the relief of partition and separate possession of the suit lands?
3. Whether this Hon^{ble} Court has jurisdiction to try the suit involving the matters of tenancy of agricultural lands Act?
4. Whether the suit is liable to be dismissed for non-joinder of necessary and proper parties?

Additional issues framed on 25.03.1987:

1. Whether the lands mentioned in para-1 of the plaint are the joint family lands of the plaintiff and defendants 1 to 7 in their entirety as contended by the 8th defendant in his additional written statement?
2. Whether the alleged lease deed executed by 8th defendant in favour of Kistaiah, first defendant is false and is a rank forgery, as contended by the 8th defendant in his additional written statement?

3. Whether the 8th defendant was never in possession of the share of this branch as lessee as contended by him in para-3 of his additional statement?
4. Whether the plaintiff has mentioned only those survey numbers which either fell exclusively to the share of 8th defendant branch or those survey number in which each branch as a share, as contended by the 8th defendant on its additional written statement?
5. Whether the plaintiff omitted to seek partition of those survey numbers which exclusively fell to the share of the first defendant branch in respect of the survey numbers stated by him in para-4 of his written statement as contended by 8th defendant in his additional written statement?
6. Whether the lands bearing new survey Nos.162 to 165, 176 and 177 and 206 were purchased by late Ramaswamy and late Varadaiah in the name of 8th defendant and 1st defendant jointly as contended by the 8th defendant in his additional written statement?
7. Whether the 8th defendant is not concerned with the lands bearing S.Nos.130, 131, 145 and 146 claimed to have been purchased by late Varadiah in the name of the first defendant, as contended by 8th defendant in his additional written statement?
8. Whether this suit for partition is no maintainable for the reasons urged by the 8th defendant in para 5 (2) of his additional written statement?
9. Whether this suit for simple partition is not maintainable and is laso barred by limitation for the reasons urged by the defendant in para 5 (3) in his additional written statement?

10. Whether this suit is bad for multifariousness in as much as the cause of action for partition is different from the cause of action of rectification of records, as contended by the 8th defendant in his additional written statement?
11. Whether this Court has no jurisdiction to try this suit, as contended by the 8th defendant in his additional written statement?

Virtually, separate issues were framed for almost all the points that are raised. This Court does not wish to recast the issues. Even the learned counsel appearing for the appellants/defendants did not make any submissions of the same. Therefore, this Court is also keeping the said issues intact.

For the plaintiff, PWs.1 to 3 were examined and Exs.A.1 to A.40 were marked. For the defendants, DWs.1 and 2 were examined and Exs.B.1 to B.30. After considering the entire oral and documentary evidence, the suit was dismissed. Questioning the same, the present appeal is filed by the defendants 2 to 7 (appellants 1 to 6) and later the legal representatives of the deceased-first defendant (defendants 14 to 16), who were added as appellants 7 to 9 in the appeal.

The plaintiff is the son of 1st defendant, defendants 2 to 7 are the plaintiff's brothers and sixth defendant is the cousin brother. Although the suit was dismissed, the

plaintiff did not file an appeal and defendants 2 to 7 in the lower Court have filed the present appeal.

This Court has heard Sri A. Narasimha Reddy, learned counsel for the appellants/defendants and Sri N.V.S.R. Gopalakrishnama Charyulu and T. Surya Satish, learned counsel appearing for the respondents.

The learned counsel for the appellants who are defendants 2 to 7 in the suit submitted that the impugned order of the lower Court is totally incorrect. The property is the ancestral property of the plaintiff and the defendants 1 to 7; that without any proper proceedings, the name of 8th defendant was included in the revenue records because of his collusion with the local village officials. Therefore, the learned counsel submits that they were compelled to file the suit for partition and also for an order deleting the name of 8th defendant from the revenue records. The learned counsel, during the course of his submissions, reiterated virtually what is stated in the grounds of appeal. The learned counsel pointed out that the lower Court did not have any material to show that there was a prior partition. He also agrees with the finding of the lower Court which relied upon Kasara Pahani.

In reply to this, the learned counsel for the contesting respondent/8th defendant, through his legal representatives argued that the order passed by the lower Court is correct; that PW.1 did not have any knowledge on the facts; that there is no pleading or proof of the alleged fraud in the revenue entries and the prior partition is established by contemporaneous documents; that the entire property has not been included in the suit for partition; and that the revenue records cannot be described particularly in Kasara Pahani.

This Court also notices complete picture of this case, which was highlighted by the lower Court also. The plaintiff's case is that the suit schedule property is belonging to his grandfather-Varadaiah. The first defendant in the suit who is the father of plaintiff succeeded to the property as per the plaintiff. Therefore, according to the plaintiff, he along with defendants 1 to 7 are entitled to a partition of the property. The case of the plaintiff is that 8th defendant has no right in the property at all. He was merely a lessee for some property and that is the reason why he is in possession of some property. As rightly pointed out by the lower Court and as per the case set up, as per the plaintiffs, the 8th defendant is almost a trespasser into the suit schedule property. On

the other hand, the 8th defendant claimed that the grandfather-Varadaiah and his brother Ramaswamy constituted a member of the joint family. The property in items 1 to 3 was purchased by them jointly and there was a partition prior to 1950. Later, the properties were also acquired by the brothers. 8th defendant also set up a case that there was a partition amongst defendants 1 to 8 and plaintiff. He also contends that he has succeeded to the property of Ramaswamy and the present suit is filed to grab his properties without including the properties that were got by first defendant in the partition.

Therefore, the first and foremost point that arises for consideration in this case is about the nature of the plaint schedule properties - whether they are joint family property or whether they are the properties that have come down to 8th defendant. Since the suit is for partition, the primary contest is raised by the plaintiff and on behalf of the plaintiff, PW.1 was examined as a witness.

PW.1 is a witness who is aged 38 years in 1987. Therefore, it is clear that he has no personal knowledge about the acquisition of the property. 1st defendant is the father of the plaintiff. Defendants 1 to 7 have filed written

statement contesting the matter, but the 1st defendant was not examined as a witness. Apart from this, this Court notices that on the date of cross-examination of PW.1 (i.e., on 28.10.1988), he admitted that first defendant was alive. He also admitted that himself and defendants 2 to 7 are the sons of 1st defendant and they are a joint family. He also admitted that he cannot say when Ramaswamy and Varadaiah separated from the family. He further admitted in his cross-examination on 16.11.1988 that Ramaswamy and Varadaiah have a half share in the residential house and later he stated that Ramawamy is in possession of the half share of the house and Varadaiah's sons and grandsons are in possession of another half share. He further admitted that he does not know when the partition was effected between Varadaiah and Ramaswamy. He also admitted that in his cross-examination on 28.07.1989 that initially he filed a suit for partition in respect of Survey Nos.144, 158 and 181. Later, the land situated in Survey Nos.160, 161, 162, 164, 165 and 206 were included. In addition, he also stated that the lands in Survey Nos.130, 131, 145 and 146 are not included in the suit schedule property. Some of the lands were also in his possession. He stated that he has documents to show the purchase of land in

Survey Nos.162 to 165, but he has not filed them. He also agreed in the cross-examination on 23.11.1989 that he has no knowledge about the facts of the case and purchase of the land. Ramaswamy who is the father of 8th defendant died when he was a 10-year old boy. In addition, he also said that the entries in the kasasra pahani are wrong entries and therefore, he is going to examine other witnesses to show the collusion between the 8th defendant and the revenue officials with regard to the wrong entries.

Coming to this theory that 8th defendant is a lessee, PW.1 admitted that during the course of cross-examination on 20.03.1990 that the Mandal Revenue Officer inspected the land and that if any land is given on lease, he has to inform the revenue authorities. He also admitted that he has not given any notice to 8th defendant for paying the share of the house from the land. The witness lastly admitted that he and his brothers partitioned their property on 26.01.1979 and that he has not filed any suit for cancellation of the partition. He admitted that he is in possession of the land in Survey No.143. A reading of this evidence shows that the theory of case set up to explain the possession of 8th defendant is not proved and that the defense by the 8th

defendant that there was a partition between defendants 1 to 7 and 8 and the plaintiff is also proved from the record.

In addition, the learned counsel for the respondents also highlighted that Exs.B.13, 13, 15, & 16 to show that the lands covered by the survey numbers mentioned therein are actually acquired by defendant Nos.1 & 8 together. These sale deeds relate to item Nos.4 to 9 of the suit schedule property. The learned counsel pointed out that the suit is filed as if the 1st defendant is the owner of the property, whereas the sale deed shows that 8th defendant has also a share which is acquired by purchase. In addition, the learned counsel also relied upon Exs.B.24 and B.25 which show that there was a partition between defendants 1 and 8. Ex.B.24 is sale deed dated 12.08.1971 under which 1st defendant sold his property/share in Survey No.206 (old 200). 8th defendant joined the sale deed since he has existed in the house of the property. While the property was being conveyed by 1st defendant, 8th defendant also joined the same. Similarly, Ex.B.25 shows that the 1st defendant has half share measuring Ac.5.31 guntas in Survey Nos.160 to 165, 176 and 177. These documents are shown as items 3 to 8. The half share with 1st defendant

had alienated by this document. This document covers items 3 to 8 of the plaint schedule.

These documents clearly establish that 8th defendant is an owner of these properties. When the other share is being alienated, 8th defendant was asked to join the execution of the sale deed.

The learned counsel for the respondents also pointed out that defendants 1 and 8 have got land in Survey Nos.157, 171 and 172. This is visible from Ex.B.14 but the said lands are not included in the litigation. In addition, respondents also relied upon Kasara Pahani and other documents like Exs.B.17 to 23, which show that the names of defendants 1 and 8 are included in the revenue records with regard to the lands in Survey Nos.144, 143, 158, 160 to 165, 166, 167, 181 and 206. These documents which are prepared over the period of years show that defendants 1 to 8 are in possession and enjoyment of the properties.

Although the allegation of fraud and manipulation in the revenue records is made, there is no clear pleading about the fraud as required under Order VI Rule 4 CPC. There is no clear evidence of the fraud, if any that is committed. No independent evidence has been introduced to show that these allegations do not reflect

the true facts. Nobody was summoned to get the connected records to show the manipulation in these documents. The Kasara Pahani is a document with good evidentiary value. A learned single Judge of this Court in a case reported in **G. Satyanarayana v. Government of Andhra Pradesh**¹ held that Kasara Pahani is a document of great evidentiary value for title (conclusion on pint No.1 (a) and (b) at para-136 of the Manupatra report). It is also an admitted fact as reproduced earlier in this case that PW.1 himself admitted that he is in possession of exclusive bit of land measuring Ac.4.26 guntas in Survey No.143. In the cross-examination on 29.03.1989 he clearly admitted that the land in Survey No.158 is in possession of the first defendant-Kistaiah and 8th defendant and 1/4th share is in possession of Kistaiah and the remaining 3/4th is in the possession of Ramaswamy. These admissions of the witness on the documents filed by the defendants to show that there is sufficient strength in the plea set up by 8th defendant that he is not a trespasser into the property and that he is a person who has a right which he has acquired from his father and grandfather. The joint right interest and property has been proved by 8th defendant.

¹ 2014 (3) ALT 473 = Manu/AP/0431/2014

The plaintiff in the suit for partition could not adduce any evidence whatsoever to prove that the properties described in the suit schedule are ancestral properties which are capable of being partitioned as prayed for.

The evidence on record is totally against the plaintiff's case. In view of all the above, this Court is of the opinion that there is virtually no proof filed by the plaintiff and in fact some of the exhibits like Ex.B.40 can be against the plaintiff. Ex.A.40 is the succession certificate dated 04.12.1950. It clearly shows that certain lands have been acquired in Survey No.144 by both Varadaiah and Ramaswamy and therefore, they have a share in the said survey number.

In this view of the matter, on issues 1, 3, 4, 6 and additional issue No.1 (framed on 25.03.1987), this Court agrees with the finding of the lower Court that the suit properties are not exclusive properties of the plaintiff and defendants 1 to 7. They are held to be the properties of defendants 1 and 8 and some of which are acquired directly in their names or some of which are inherited from their grandfather. The partition pleaded by 8th defendant is also held to be true.

The lease that has been propounded by the plaintiff is not at all proved. There is no documentary or other evidence to show that the land exists. Therefore, issue No.2, additional issue No.1 (19.12.1983) and additional issues 2 & 3 (25.03.1987) are all answered against the plaintiff.

Issue No.5 is about the plea of manipulation of the revenue records. As already mentioned, this Court did not find adequate pleading or evidence about the alleged fraudulent manipulation of the record. The higher standard of proof necessary to prove fraud is not at all present in this case. Therefore, this Court concurs with the finding of the lower Court on issue No.5.

With regard to additional issues 4 and 5 (25.03.1987), this Court also concurs with the findings of the lower Court. The plaintiff has only mentioned those items which fell to the share of 8th defendant branch and deliberately excluded his properties.

In view of the admission of 8th defendant and the evidence of plaintiff which is noticed by the lower Court, no separate finding is given on the additional issue No.7 (25.03.2017).

With regard to additional issues 3 & 4 (framed on 19.12.1983) and additional issue Nos.8 & 11 (framed on

25.03.1987), as mentioned earlier, the lease that has pleaded by the plaintiff is not proved at all. Consequently, rest of the contentions does not survive for consideration as held by the lower Court.

However, with regard to additional issue No.2, which was framed on 19.12.1983, this Court disagrees with the finding of the lower Court that the joint possession is not proved at all in this case. The plaintiff cannot pay a fixed court fee of Rs.200/-. The court fee paid by the plaintiff is absolutely inadequate. The court fee should be recovered from the plaintiff/appellant.

In view of all the above, this Court is of the opinion that there are no merits in the appeal and accordingly, the same is dismissed. The judgment and decree dated 10.08.1998 in O.S.No.66 of 1993 passed by the I Additional District Judge, Ranga Reddy District at Saroornagar, Hyderabad are confirmed. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous Petitions, if any pending in this appeal, shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 31.12.2018
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