

THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

C.C.C.A.NO.110 OF 1996

JUDGMENT:-

The plaintiff in O.S.No.501 of 1990 on the file of the Court of VII Additional Judge, City Civil Court, Hyderabad is the appellant herein.

The suit one was filed for cancellation of the decree in O.S.No.1438 of 1982 on the file of the Court of I Additional Judge, City Civil Court, Hyderabad as confirmed in A.S.No.87 of 1986 and S.A.No.464 of 1988. The dispute between the parties is with regard to a house which belonged to one late Durjan Singh son of Late Sri Pooran Singh who died in 1933 leaving behind his widow Tulsa Bai and two daughters by name Chandan Bai and Janaki Bai. Another daughter Rukmini Bai pre-deceased him and the defendant is her daughter. The plaintiff married Janaki Bai and out of the wedlock a boy by name Rakesh was born in 1945 and he survived only for 21 days and consequently he succeeded to the property of Durgin Singh. The defendant is in possession of the ground floor with the permission. The defendant filed the suit O.S.No.1438 of 1982 suppressing the fact of birth of Rakesh and hence the above decree is not valid and the plaintiff is entitled to the property.

The defendant filed a written statement denying the claim that Rakesh was born and died within 21 days and the contention that the defendant is staying in the house with permission in the ground floor is also disputed. According to her, she filed the suit O.S.No.1438 of 1982 against the plaintiff herein for possession and mesne profits and the decree was obtained and the plaintiff also raised the contention about the birth of Rakesh and succeeding to the property after the death of the boy, which was not accepted and, therefore, the present suit is barred on the principles of

res judicata.

After framing the necessary issues, on behalf of the plaintiff PWs.1 and 2 are examined and marked EXs.A-1 to A-4 and on behalf of the defendants DW.1 was examined and marked Exs.B-1 to B-5 and Exs.C-1 to C-3.

After considering the material evidence on record and documents, the lower court dismissed the suit and aggrieved by the said judgment, the present appeal has been filed.

Now the point that arises for consideration is:-

Whether the plaintiff is the owner of the property and the decree in O.S.No.1438 of 1982 is liable to be set aside?

POINT:-

The strength of the claim of the plaintiff is that one boy was born to him through his wife Janaki Bai, survived for 21 days and consequently he succeeded to the property in the family and the plaintiff is, therefore, owner of the property. This fact was considered in the first appellate court and this contention was not accepted. The lower court also found from the contention in the written statement filed in O.S.No.1438 of 1982, the present plea is not raised. It is only in the first appeal such a plea was raised. Though Ex.A-1 is said to have been issued by the Corporation about the birth of the child to Janaki Bai on 21-08-1954, the lower court found that it does not show the name of the father. The original Register Ex.A-2 was summoned and the court found that there is a blank. There is also an inconsistency as to where the child was born. In fact, the first appellate court in its judgment Ex.B-4 specifically found that though in the evidence the present plaintiff claimed that a boy was born, there was no plea in the written statement and it was found that the defendant who is surviving daughter alone succeeded to the property. It was also noticed that Janaki Bai died even prior to the death of Tulasi Bai and consequently Janaki Bai does not get any rights

and even if a son is to be born, he will not get any right. In the second appeal also, the above fact was upheld. Evidently, the title of the defendant has been considered in the earlier suit and the contention of the present plaintiff has not been accepted and there is neither fraud nor illegality in the earlier judgments. When the judgment in the earlier suit has become final and when the findings therein about the birth of son Rakesh is also decided, again it is not open to the plaintiff to reagitate the same and the learned Judge has rightly dismissed the suit and there are no grounds to interfere with the judgment and decree passed by the lower court and accordingly the appeal is liable to be dismissed.

Accordingly, the City Civil Court Appeal is dismissed. No costs.

N.R.L. NĀGESWARA RĀO,J

03-11-2011
TSNR