

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

APPEAL SUIT No. 773 OF 1998

JUDGMENT:

This appeal is filed against the Judgment passed by the Subordinate Judge, Medak in O.S.No.62 of 1992 dated 15.07.1997. For the sake of convenience, the parties herein are referred as arrayed by the trial Court.

2. The case of the plaintiff in brief is that:

Plaintiff No.1 is the wife and plaintiff Nos.2 to 4 are children of late Raheemuddin. Defendant No.1 is own brother of Raheemuddin. The father of late Raheemuddin and defendant No.1 is late Shahabuddin, and he had owned agricultural lands measuring Ac.4-00 in Survey Nos.67, 254, 75, 85 and 70 situated at Chik Maddur Village, Mandal Hathnoor i.e., 'A' schedule properties. He also owned one house situated in the same village i.e., 'B' schedule property. Thus the land and suit house are Matraka properties of deceased Shahabuddin. The husband of the first plaintiff (Raheemuddin) and the defendant No.1 have succeeded the properties after the death of Shahabuddin. These properties

remained un-partitioned, and both have been in possession and enjoyment of the same. They have also purchased some joint properties i.e., 12 bore gun and they are 'C' schedule properties.

It is the further case of the plaintiffs that late Raheemuddin who is the husband of plaintiff No.1 and defendant No.1 had equal share in all the suit schedule properties. Raheemuddin died about 26 years back, ever since the death of Raheemuddin, the defendant No.1 has been in exclusive possession and enjoyment of the suit properties, except a room in the suit house and an extent of Ac.1.20 gts. in the suit land, and they are in possession of the plaintiffs. Defendant No.1 taking undue advantage of the fact that plaintiff No.1 is a helpless widow, and the other plaintiffs are minor children, did not come forward for partition, which they have been demanding ever since the death of Raheemuddin, and has been evading their repeated demands for partition and separate possession. On 4.2.1990 the defendant No.1 promised to partition the suit properties and hand over their half share within one year i.e. by 4.2.1991. But despite reminding and demanding by the plaintiffs, he has not come forward for partition. Later the

plaintiff came to know that he has passed on 0-14 guntas of land to the possession of defendant No.2 by way of sale.

Further contention of the plaintiffs is that there are two tamarind trees, neem tree in the suit house and they have been getting income of Rs.2,000/- per year from the harvesting of these trees, hence Rs.56,000/- in total that has been derived by the defendant No.1 for the last 26 years. Hence they are entitled for the same.

3. Defendant Nos.1 and 2 admitted the relationship of plaintiffs and defendants and denied the plaint averments stating that A-schedule property was already partitioned and the defendant No.1 had got half share out of the suit lands, and in terms of the said partition, plaintiff No.2 sold the above said land to defendant No.1 for a total consideration of Rs.40,000/-. Out of the said Rs.40,000/-, defendant No.1 paid Rs.10,000/- to the plaintiff No.2 and the remaining balance consideration of Rs.30,000/- is to be paid to the plaintiff No.2, and the plaintiff No.2 in terms of agreement of sale, executed a document dated 4.2.1980 in favour of his daughter-in-law by name Nazeema Begum. He further

contended that the plaintiffs have no right over the B-schedule property and it is his exclusive property and they are not 'Matruka' properties left by Shahabuddin. They denied that schedule-C properties are never purchased by the husband of the plaintiff No.1 Raheemuddin jointly. In fact, Raheemuddin during his life time got partitioned the properties and was in exclusive possession and enjoyment, as such, the plaintiff No.1 being widow and plaintiff Nos.2 to 4 being their sons, were in joint possession and that they are joint owners, is denied. He also denied about the possession of a room in the suit schedule properties by the plaintiffs and also contended that the plaintiffs are in no way concerned with two tamarind trees and neem tree.

4. Based on the above pleadings, the learned trial Judge framed the following issues:

- 1) Whether the plaintiffs are entitled for partition of the suit schedule properties as prayed for?
- 2) Whether the court fee paid is not correct?
- 3) To what relief?

5. Before the trial Court, plaintiff No.1 was examined as PW.1 and got examined PW.2 and Exs.A1 to A7 were marked on their behalf. On behalf of defendants, defendant No.1 examined himself as DW-1 and got examined DWs.2 and 3 and marked Ex.B1.

6. The trial Court after considering the evidence on record, decreed the suit declaring that the plaintiffs are entitled to half share and defendant No.1 is entitled to remaining half share in the plaint schedule properties and passed preliminary decree.

7. Aggrieved by the Judgment and Decree, the defendant No.1 preferred the present appeal.

8. Heard both sides.

9. In view of the facts and circumstances of the case and the submissions of the learned counsel for the appellants and the respondents, the issue that arises for consideration is whether the impugned judgment and decree of trial court warrants any interference?

POINT:

10. The suit is for partition of suit schedule properties into equal shares. The main contention of the plaintiffs is that the schedule properties are 'Matruka' properties and after the death of her father-in-law, her husband and defendant No.1 are entitled for equal share i.e. half share each in the properties.

11. To prove the case of plaintiffs, plaintiff No.1 was examined as PW-1 and reiterated the contents of the plaint. PW-2 who is the resident of her villager deposed that in the year 1972, 1973, he worked as a Clerk in their village Patwari and that the suit properties are ancestral properties of plaintiffs and defendants and the plaintiffs and defendants are in joint possession of these properties and no partition took place in respect of the suit properties and he was never been called to act as mediator for any partition.

12. Coming to the evidence of defendants, defendant No.1 himself was examined as DW-1 and reiterated the contents of his written statement. DW-1 has stated in his evidence that schedule-A properties are partitioned after the death of his brother about 40

years back and out of A-schedule properties, he got half share and his sister-in-law i.e. plaintiff No.1 and her son Shabuddin i.e. plaintiff No.4 had sold their share for a consideration of Rs.40,000/-, and he paid Rs.10,000/- to the plaintiff No.4 and the balance consideration of Rs.30,000/- was not paid to the plaintiffs till to-day. In the cross-examination he stated that he does not know when his brother died and the partition took place 25 years back. Konda Rajmallaiah, Lal Khan, Suleman Sab, Baga Reddy Sab are all present at the time of partition. Only Konda Raj Mallaiah is alive. Himself, his elder sister and his brother-in-law were present and none else were present. He admitted that after the death of his father, himself and his brother late Raheemuddin have been in possession of the suit properties and even after the death of his brother, the possession has been continued by himself and plaintiffs. He is not in possession of any document to show that the plaintiffs sold him any part of the suit land. He also stated that his brother and himself have been living in B-schedule. Himself and plaintiffs are living in the suit schedule property and he is having share in it. He admitted about the issuance of demand notice by the plaintiffs for partition of the suit schedule properties.

13. DW-2 G.Raja Mallaiah deposed that partition took place about 20 years back and in the year 1971, defendant No.1 partitioned their 'Matruka' properties along with plaintiff No.1 and that he acted as an elder and it has been reduced in writing. In the cross-examination he stated that the husband of plaintiff No.1 was due some amount, and in terms thereof, she has given her half share of land for cultivation for a period of six years, and he set-off the said amount by way of cultivation. Both the land and house were partitioned equally in between the plaintiff and defendant and the suit land and house were not demarcated by metes and bounds, but orally shown the areas, and the defendant is cultivating the land, and the plaintiff cultivating the land by leasing to others. Defendant No.3 stated that he has been cultivating the plaintiffs land after partition between PW-1 and DW-1 for a period of 15 years on lease. In the cross-examination he stated that he has no record to show that he has been cultivating the land and he do not know the extent of land he cultivated and he used to share the produce to the extent of half.

14. It is pertinent to state that as per the case of the defendants the properties were partitioned between the plaintiff No.1 and

defendant No.1 and later the plaintiff No.1's son has sold her share of property for Rs.40,000/-. Even assuming for a moment that, the property was purchased by defendant No.1 from the son of plaintiff No.1, the sale was not completed and it is invalid, as plaintiff No.2 is a minor and furthermore, his own admission that he purchased it for a total sum of Rs.40,000/-, and out of the said amount, he paid only Rs.10,000/- under agreement and Rs.30,000/- is yet to be paid to the plaintiff No.2. That itself shows that sale was not complete and he also admitted that till today he has not paid Rs.30,000/-. Therefore, it is clear that the plaintiff No.1 has not received her share nor the defendant No.1 has purchased the share of the property of the plaintiffs.

15. As per the plaintiffs, after the death of her husband, herself, her sons and defendant No.1 are living jointly and that they are in possession of Ac.1-20 guntas of land and remaining area is in the possession of defendant No.1. She also stated that they are in possession of a room in schedule-B house. She further stated that she never sold her share to defendant No.1 either in A.schedule or B.schedule property. She denied about the selling away her share of property by plaintiff No.2 for consideration of

Rs.40,000/-. PW-2 has supported the version of PW-1 and stated that the plaint schedule properties are Matruka properties of plaintiffs and defendant No.1.

16. On the other hand, defendants contention is that there was a partition took place about 20 years back and that the defendant No.1 purchased the share of the plaintiffs by way of sale agreement from plaintiff No.2 and relied on Ex.B-1 partition deed. He also stated that the persons who were present at the time of Ex.B-1 have passed away but only K.Raja Malla Reddy is alive.

17. K.Raja Malla Reddy was examined as DW-2. He deposed that in the year 1971 after the death of husband of PW-1 partition took place for their Matruka properties under Ex.B-1 and he attested on Ex.B-1. It is pertinent to state that DW-1 has clearly stated that PW-1 and defendant No.1 are cultivating their lands by leasing out to others. Cultivating the lands and enjoying the produce does not confirm any partition without any documentary proof. Further, no document is filed to show that their names are mutated in the revenue records showing the possession/ownership of the suit land even after 25 years of partition. Further Ex.B-1 does not reveal

the above fact. Even as per DW-1, they are continuously in possession of B-schedule property which clearly shows that B-schedule property is not partitioned. When there is no proof of partition of the properties, the plaintiffs are entitled for the entire suit schedule property as it is Matruka property.

18. Defendant No.1 in his evidence stated that he has been paying land revenue, but no document is filed to show that he has been paying land revenue tax. On the other hand, the plaintiffs have filed Exs.A4 to A6 land revenue receipts which reveal that the plaintiffs are paying land revenue with regard to the suit lands. Though she has not filed any pahani patrika as on the date of filing of the suit and it is an admitted fact that the plaint schedule properties are ancestral properties and the properties belong to one late Shahabuddin and the same was not denied by the defendant No.1. As per the evidence of DW-2, the suit lands and suit house were not demarcated by metes and bounds, but orally shown the area. He also stated that the defendant No.1 is cultivating his lands and the plaintiff No.1 is cultivating her lands by leasing out to others. That itself shows that the suit lands were not divided by metes and bounds. But they might have agreed to

cultivate the land by making internal arrangements according to their convenience and the defendant No.1 has also admitted that Exs.A4 to A6 are land revenue receipts and he has not filed any receipt to show that he is also paying land revenue to the revenue authorities.

19. In view of the above, it is very clear that the properties are admittedly Matruka properties of late Shahabuddin, father of defendant No.1 and father-in-law of plaintiff No.1 and they are entitled for half share each in it and the learned Subordinate Judge, Medak after elaborate discussion by considering the oral and documentary evidence came to right conclusion. Hence, interference by this Court is not necessary and the appeal is devoid of merits and the same is liable to be dismissed.

20. Accordingly, the appeal is dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

11.07.2022
Pgp/AVS

M.G.PRIYADARSINI,J