

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL No.659 of 2015

JUDGMENT :

This Second Appeal is arising out of the judgment and decree dated 18.06.2015 in A.S.No.138 of 2009 on the file of II Additional District Judge, Warangal, which is arising out of the judgment and decree dated 27.07.2009 passed in O.S.No.1098 of 2001 on the file of II Additional Senior Civil Judge, Warangal.

2. For the sake of convenience, the parties are referred to as arrayed before the trial Court. The appellant is the defendant No.1.

3. Initially, the suit is filed by the plaintiffs against the defendants seeking partition of suit schedule property into four equal shares and for allotment of one share each to plaintiff Nos.1 and 2. The case of the plaintiffs is that the 1st plaintiff is the wife, and defendant Nos.1 and 2 are the children of one late S.Krishna Rao and the 1st plaintiff. The said late S.Krishna Rao was a business was doing business in textiles, foot wear and liquor who died on 16.04.1985. At the time of his death, he possessed two houses bearing Nos.1/332 and 1/333 situated at Krishna Nagar,

Kazipet and a Shopping Complex bearing No.1/3/110 situated at main road, Kazipet consisting of 8 mulgies besides 1/3rd undivided share in house bearing H.No.1-4-95 situated at Vishnupuri, Kazipet. Further, late Krishna Rao also owned properties jointly with his brothers namely late Satyanarayana and late Srinivasa Rao. On 26.04.2001, house bearing H.No.1-4-95 was sold to one Ravula Venkata Reddy wherein the plaintiffs have also signed the sale deed along with defendant No.1 and others and the share allotted to late Krishna Rao was Rs.2,83,000/- which was received by defendant No.1 on behalf of plaintiffs and others. Late Krishna Rao died in the year 1985, by that time, defendant No.1 was only 14 years old, therefore, 1st plaintiff managed the properties and got performed the marriage of defendant No.2 in the year 1998. The husband of defendant No.2 was the nephew of 1st plaintiff. In the year 1993, defendant No.1 took over the entire management of the property and the plaintiff No.1 handed over Rs.70,000/- cash to defendant No.1 and the said amount was utilized for the marriage of defendant No.2 which took place in the year, 1998.

4. It is the further case of the plaintiffs that defendant Nos.3 to 9 are the tenants in the mulgies and defendant No.10 is the tenant of the portion of house bearing H.No.1-5-5 situated at Krishna Nagar, Kazipet and they all were paying rents. In the month of November, 2000, defendant No.1 married a girl of his choice and started neglecting the plaintiffs. As defendant No.1 was collecting all the rents and neglected the plaintiffs, the plaintiff No.1 constrained to issue notice to the 1st defendant demanding him to pay Rs.4,000/- per month out of the rents for her maintenance. Further, the 1st defendant got mutated the shopping complex bearing H.No.1-3-110 on his name in the municipal record by taking some lady personating as his mother. Later, the defendant No.1 left the house along with his wife and neglected the plaintiffs, for which they were constrained to file a suit for partition as Class 1 heirs for the property of late S.Krishna Rao.

5. On the other hand, the 1st defendant filed a detailed written statement admitting the fact of relationship, the death of his father and his age as on the date of death of his father. It is further submitted by the defendants that the 2nd plaintiff is a lunatic and

not represented by her guardian/next friend and therefore, suit has to be dismissed. It is the specific contention of defendant No.1 that late S.Krishna Rao executed a Will Deed in his favour and therefore, the plaintiffs are not entitled for the properties of late S.Krishan Rao in view of the testamentary deed and therefore prayed to dismiss the suit as it is devoid of merits.

6. Basing on the above pleadings, the trial Court has framed the following issues:-

- “1. Whether the plaintiff No.2 is mentally retarded person, if so, whether she ought to have been represented by next friend/guardian?
2. Whether the father of the defendant i.e., husband of plaintiff No.1 died intestate or he has executed a Will Deed dated 04.02.1985?
3. Whether all the property of the plaintiff and defendant Nos.1 and 2 are included in the petition schedule lands?
4. Whether the suit schedule properties are ancestral properties or “joint family property”?

5. Whether the plaintiffs are entitled for partition of the petition schedule property if so whether they are entitled for 1/4th share each in the petition schedule property?
6. To what relief?"
7. On behalf of plaintiffs, P.Ws.1 and 2 were examined and Exs.A-1 to A-22 were got marked and on behalf of the defendants D.Ws.1 to 3 were examined and Exs.B-1 to B-24 were got marked.
8. Admittedly, there is no dispute with regard to relationship between the parties in this case. The 1st plaintiff is the wife of late Krishna Rao and the 2nd plaintiff, defendant Nos.1 and 2 are daughter and sons of late Krishna Rao. The entire dispute in this case revolves around the properties as to whether late S.Krishna Rao died intestate leaving behind his legal heirs as the original sharers of the property or whether he has executed a Will Deed dated 04.02.1985 in favour of 1st defendant. Further, the dispute is also relating to collection of rents from the tenants either by the 1st plaintiff or by the 1st defendant and whether the said amounts

which have been received either by the 1st plaintiff or by the 1st defendant are accounted.

9. The trial Court after considering the oral and documentary evidence on record has passed preliminary decree as under:-

- “1. That the suit properties are partitioned by allotting one share to the first plaintiff and noting one share to the 2nd plaintiff out of 4 equal shares of the suit schedule property.
2. That the defendants do pay to the plaintiff a sum of Rs.5,925/- towards cost of the suit”

10. Being aggrieved by the said judgment and decree, the 1st defendant preferred A.S.No.138 of 2009 on the file of II Additional District Judge, Warangal. On hearing the appellant, the 1st appellate Court has framed the following points for consideration:-

- “1. Whether additional documents filed during appeal through a petition under Order 41 Rule 27 of C.P.C can be allowed and received in evidence?
2. Whether the judgment and decree passed by the learned II Additional Senior Civil Judge is erroneous in facts, and law and therefore, liable to be set aside?

3. To what relief?”

11. Considering the rival contentions of the parties and oral and documentary evidence, the 1st appellate Court dismissed the appeal with costs confirming the judgment and decree passed by the II Additional Senior Civil Judge, Warangal in O.S.No.1098 of 2001, dated 27.07.2009.

12. Being aggrieved by the judgment and decree of the 1st appellate Court, the 1st defendant preferred the present Second Appeal raising the following substantial questions of law along with memorandum of grounds:-

- “a) Whether or not the Courts below is justified in allotting equal share to the appellant and the respondents 1 to 3 without taking into account the expenses incurred for performing the marriage of respondents 2 and 3 and the money given to them at the time of their marriage?
- b) Whether the Courts below is justified in allotting equal share to the 2nd respondent by not taking into account the expenses incurred for performance of her marriage and also the

amounts spent for treatment of the 2nd respondent?

- c) Whether the Courts below justified in holding that the suit schedule properties are self acquired properties of the father of the appellant in the absence of any evidence on record?
- d) Whether or not the findings of the Courts below that the father of the appellant acquired the joint family properties with the income earned by him by carrying on business in the absence of any evidence on record?
- e) The judgments and decrees passed by the Courts below are not sustainable in law in the absence of evidence in support of the findings recorded therein?
- f) Whether or not the Courts below is correct in allotting equal shares to the appellant and his mother and sisters in a ancestral properties?"

13. Heard the learned counsel for the appellant. Perused the record.

14. On perusal of the entire record, it is evident that the substantial questions of law which were mentioned at paragraph 8

i.e., 'a' to 'f' are not on law but they are relating to the facts which have been already decided by the Courts below concurrently. The 1st appellate Court can deal with mixed questions of facts and law but the 2nd appellate Court has to interfere with the judgment and decree of the Courts below, if there is any substantial question of law is involved. In the present case, no substantial question of law is involved.

15. It is the specific plea of the appellants that late Krishna Rao has executed a Will Deed dated 04.02.1985 in favour of the 1st defendant/appellant but the appellant has not filed any document before the Courts below to prove his case. As per Section 101 of C.P.C, whoever ascertains a particular fact, it is for them to prove the same. It is the specific contention of the 1st defendant that he inherited the property of late S.Krishna Rao by way of testamentary document i.e., Will Deed dated 04.02.1985 and it is for him to prove the said fact.

16. On the other hand, it is the specific case of the plaintiffs and defendant Nos.1 and 2 who are interrelated to each other i.e., wife, daughter and sons of late Krishna Rao and that the properties are

self acquired properties of late Krishna Rao and he died intestate. In order to prove the said fact, the plaintiffs have relied on oral and documentary evidence i.e., Exs.A-1 to A-9 which clearly show that the said properties are on the name of late S.Krishna Rao. Therefore, both the Courts have rightly decreed the suit in favour of the plaintiffs by giving 1/4th share to each of them.

33. It is pertinent to mention that there is limited scope under Section 100 of CPC while dealing with the appeals by the High Courts. In a Second Appeal, if the High Court is satisfied that the case involves a substantial question of law, only then, this Court can interfere with the orders of the Courts below. On perusal of the entire material on record, this Court is of the considered view that the orders of the Courts below are not perverse and there is no misreading of evidence, and therefore in the absence of substantial question of law, it is not proper to interfere with the concurrent fact findings of the Courts below. Therefore, the Second Appeal deserves to be dismissed.

34. In the result, the Second Appeal is dismissed at the stage of admission confirming the judgment and decree 18.06.2015 in

A.S.No.138 of 2009 on the file of II Additional District Judge,
Warangal. No order as to costs.

Pending miscellaneous applications, if any, shall stand
closed.

G.ANUPAMA CHAKRAVARTHY, J

Date:29.11.2022
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