

THE HON'BLE SRI JUSTICE A.VENKATESHWARA REDDY

APPEAL SUIT NO.132 OF 2016

JUDGMENT:

The unsuccessful plaintiff has filed this appeal suit assailing the judgment and decree dated 23.09.2015 in O.S.No.1475 of 2011 on the file of the learned Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

2. The plaintiff has filed the Original Suit in O.S.No.1475 of 2011 for partition and separate possession of his 1/5th share in suit schedule 'A to J' properties as mentioned in the plaint schedule. The trial Court has negatived the claim of the plaintiff holding that plaintiff failed to prove that plaint schedule 'A to J' properties are the joint family properties of the parties and they are not liable for partition. Feeling aggrieved by the said judgment and decree dated 23.09.2015 this appeal is filed.

Pleadings of the plaint and written statement :

3. In brief, the plaint averments are that the plaintiff and defendant Nos.2 to 4 are the sons of defendant No.1 and late Raghunandana Chary, who died about

fourteen years prior to filing of the suit leaving behind the parties to the suit as his only legal heirs. The plaintiff and defendants were maintaining a welding shop viz. Srikanth Welding & Engineering Works at Karmanghat. During lifetime of late Raghunandana Chary and after his death, they are doing the said business and out of the income derived from the welding business, the second defendant being Karta of the joint family, has purchased the following suit schedule properties.

(a) All the family members have jointly contributed for purchasing house plot bearing No.14, admeasuring 216 Sq.Yards in Sy.No.344/E at Khalasa, Ibrahimpatnam, vide registered sale deed document No.1741 of 2004, dated 12.03.2004, it is schedule 'A' property on the name of plaintiff;

(b) House plot No.34, admeasuring 177 Sq.Yards in Sy.Nos.353 and 354 at Khalasa, Ibrahimpatnam was purchased under registered sale deed document No.3318 of 2004 on the name of 2nd defendant, it is schedule 'B' property;

(c) House plot No.5, admeasuring 304 Sq.Yards in Sy.No.122, Mandalpally Village was purchased under registered sale deed No.635 of 2002, dated 08.03.2002 on the name of defendant No.2, it is schedule 'C' property;

(d) House plot No.3, admeasuring 300 Sq.Yards, in Sy.No.4, at Dawoodkhanguda was purchased under registered sale deed document No.790/2001, dated 31.01.2001 in the name of defendant No.2, it is schedule 'D' property;

(e) Plot No.98, admeasuring 311 Sq.Yards in Sy.No.55, situated at Raghavendra Nagar, Jillelaguda was purchased on the name of defendant No.2, as per sale deed document No.6857 of 2006, it is schedule 'E' property;

(f) Plot No.160 Southern part, admeasuring 115 Sq.Yards in Sy.Nos.52/1, 52/2, 53/1, 53/2, 54 and 55, Durga Nagar Colony, Bairamulguda Village, was purchased under registered sale deed document No.5279 of 1998, dated 16.10.1998 on the name of defendant No.2, it is schedule 'F' property;

(g) House No.10-1-78/47/1 on plot No.47, admeasuring 113 Sq.Yards with a plinth area of 495

square feet in the ground floor and first floor, was built at Srinivasa Nagar Colony, Lingoiguda, and it was purchased under registered sale deed document No.243 of 2003, dated 22.01.2003, it was purchased on the name of defendant No.2, which is schedule 'G' property;

(h) Plot No.25, admeasuring 225 Sq.Yards in Sy.No.32, situated at Ganganagar Colony, Bonguloor Village was purchased under registered sale deed document No.1873 of 2002, dated 15.07.2002 on the name of defendant No.3, it is schedule 'H' property;

(i) Plot bearing No.16, admeasuring 200 Sq.Yards in Sy.No.344/E of Khalasa, Ibrahimpatnam was purchased under registered sale deed document No.1740 of 2004 dated 12.03.2004 on the name of defendant No.4, it is schedule 'I' property.

(j) House plot No.18-1-337/51 consisting of three rooms, tenement portion with RCC roof, constructed in an area of 99 Sq.Yards situated at Arundhathi Nagar Colony, Uppuguda, Hyderabad is schedule 'J' property, it is on the name of defendant No.1.

Except defendant No.2 i.e. the plaintiff, defendant Nos.1, 3 and 4 are residing jointly in the 'J' schedule property whereas, the 2nd defendant is residing in 'F' schedule property but there is no partition among the parties in respect of schedule 'A to J' properties. Plaintiff has come to know in the month of May, 2011 that the 2nd defendant is trying to alienate 'B' and 'C' schedule properties to some third parties and accordingly questioned the defendant No.2 and demanded for partition but the 2nd defendant did not respond. Again on 10.06.2011 the plaintiff has demanded for partition of the schedule properties but in vain, hence the suit is filed for partition and separate possession of schedule 'A' to 'J' properties, as indicated above.

4. The defendant Nos.1, 3 and 4 remained absent and they were set ex-parte. The 2nd defendant only contested the suit by filing detailed written statement alleging that father of the plaintiff and defendant Nos.2 to 4 has married one Vijaya Lakshmi, real sister of defendant No.1 as his second wife and neglected the plaintiff and defendant Nos.1 to 4, left the house and the total burden of

the family was on 2nd defendant, he has taken the entire responsibility as the elder son of the family, started working in the welding shop, gradually got the knowledge about the welding work, developed reputation in the society, with the said earnings he started giving education to his brothers, the plaintiff and defendant Nos.3 and 4 and also performed their marriages and performed the marriage of three daughters of Vijaya Lakshmi, the 2nd wife of his father. Late Vijaya Lakshmi died in the year 1997 and whereas his father died in the month of January, 1998. The 2nd defendant was earning good amount and used to contribute the same to his family and out of his earnings, he purchased schedule 'A' to 'T' properties, he is residing in schedule 'F' property and running welding shop in 'G' schedule property and whereas, 'J' schedule property is the plot allotted by the Government to the 1st defendant i.e. mother of the parties. This defendant has constructed a double bed room house in the ground floor and single bed room in the first floor in 'J' schedule property. Defendant Nos.1, 3 and 4 are enjoying 'J' schedule property. However, from January, 2010 onwards plaintiff is not

attending any work in the welding shop and he is not in talking terms with the 2nd defendant. The plaintiff, defendant Nos.1, 3 and 4 colluded together only to knock away the properties acquired by the 2nd defendant. He also took LIC policies in the name of plaintiff, defendant Nos.3 and 4, paid the premium. No properties were acquired from the joint earnings of the plaintiff and defendants. There is lot of age gap between the 2nd defendant and plaintiff, defendant Nos.3 and 4. 'J' schedule property was only transferred in the name of 1st defendant and thereafter 2nd defendant made construction of the house therein. 'A' to 'I' schedule properties are the self-acquired properties of 2nd defendant, they are not liable for partition. The plaintiff is not entitled for partition of any of the schedule properties.

Issues:

5. Basing on the pleadings, the following issues were settled:

1. Whether plaint schedule properties are joint family properties, acquired by the plaintiff and defendants?

2. Whether the plaintiff is entitled for 1/5th share in the suit schedule properties?

3. Whether the plaint schedule properties are liable for partition?

4. To what relief?

Evidence and findings of the trial Court:

6. During trial, on behalf of plaintiff, he himself got examined as PW1 and examined two other witnesses as PWs.2 and 3. The defendant No.1, mother of the parties to the suit, who remained ex-parte in the suit, is examined as PW4. On behalf of plaintiff, Exs.A1 to A21 documents are marked. After closure of plaintiff's evidence, on behalf of contesting defendant i.e. the 2nd defendant, he himself got examined as DW1 and two other witnesses were examined as DW2 and DW3. In all Exs.B1 to B8 documents are marked on behalf of the defendants.

7. The trial Court on appreciation of oral and documentary evidence, stated above, dismissed the suit of the plaintiff holding that the plaintiff is not entitled for partition and separate possession of the suit schedule property. Feeling aggrieved by the said judgment and decree this appeal suit is filed.

8. Heard learned counsel on both sides. The submissions made on either side have received due consideration of this Court.

9. In the light of the material available on record and the contentions raised, the following points would arise for consideration :

Points :

(i) Whether the plaintiff is entitled for partition and separate possession of suit schedule properties, as prayed for?

(ii) Whether the judgment and decree impugned warrants any interference by this Court?

Since both the points are interrelated, for the sake of convenience, they are answered together as under:

Point Nos.(i) and (ii):

10. The admitted or undisputed facts of the case are that the plaintiff and defendant Nos.2 to 4 are the sons of late Raghunandana Chary and defendant No.1 is the widow of late Raghunandana Chary, being mother of plaintiff and defendant Nos.2 to 4. The plaintiff's father has married Vijaya Lakshmi, real sister of defendant No.1

as his second wife and immediately after the birth of his sons, late Raghunandana Chary started living with Vijaya Lakshmi. The plaintiff and defendant Nos.2 to 4 were also having another sister viz. Vara Lakshmi, but she died. Similarly, late Raghunandana Chary i.e. the father of plaintiff and defendant Nos.2 to 4 has got three daughters through his second wife Vijaya Lakshmi.

11. The case of the plaintiff is that their father late Raghunandana Chary was doing welding business and after his death, the plaintiff and defendant Nos.2 to 4 continued the said business, gained prosperity, from the income derived out of the said business suit schedule properties were purchased and as such, the plaintiff is entitled for partition and separate possession of his 1/5th share in suit schedule properties. Now let me examine the oral and documentary evidence adduced on behalf of both the parties to substantiate their case.

12. The plaintiff as PW1 filed his evidence affidavit in lieu of chief examination, reiterating the plaint averments. Though Exs.A1 to A21 documents were

marked, in the entire cross-examination none of these documents are disputed. PW1 has admitted that they are four brothers and one sister. He has also admitted about the second marriage of his father and three daughters of his father through his second wife. Further PW1 admitted that he did not mention in the plaint or in his evidence affidavit about the second wife and children of the second wife of his father. Similarly he did not mention about his sister Vara Lakshmi and her two sons since she died. He admitted that the 2nd defendant is doing welding work and that the suit schedule 'A' to 'I' properties are not ancestral properties. Thus, the plaintiff has suppressed the second marriage of his father and three daughters of his father through his second wife. He also suppressed the fact that they have another sister and she died. Further, he has fairly admitted that none of 'A' to 'I' schedule properties are the ancestral properties.

13. PW2 is claiming to be the owner of welding shop premises. She has filed her evidence affidavit in support of plaintiff's claim. However, in the cross-examination she has stated that plaintiff's father was having four sons, she

does not know about the second wife of the plaintiff's father and about any children through her and that she does not know about the properties of late Raghunandana Chary, father of the plaintiffs. She does not know where the suit schedule properties were situated.

14. PW3 A.Sudhakar Reddy testified that he does not know when late Raghunandana Chary established Srikanth Welding and Engineering Works Shop and he does not know in whose name schedule 'A' to 'J' properties are standing, he does not know whether the defendant No.2 has established the welding shop and does not know whether plaint 'A' to 'I' properties were acquired or not by late Raghunandana Chary.

15. This evidence of PWs.2 and 3 is of no use to the plaintiff to establish that the suit schedule properties were acquired from out of the income derived from Srikanth Welding Shop and that plaintiff and defendant Nos.2 to 4 were working in Srikanth Welding and Engineering Shop during the lifetime of their father in the premises owned by PW2. These witnesses have simply appears to have given

evidence at the instance of plaintiff and their evidence does not carry any credence.

16. PW4 is the mother of plaintiff and defendant Nos.2 to 4, she is the defendant No.1, she did not chose to file written statement and remained ex-parte in the original suit but she is examined as PW4 on behalf of plaintiff. She has filed her evidence affidavit in lieu of chief-examination in support of plaintiff claim on all aspects. However, in cross-examination she has admitted that she has four sons and one daughter viz. Vara Lakshmi and the said Vara Lakshmi and the plaintiff are the twins. Her husband has married her real sister Vijaya Lakshmi as his second wife and through her he got three daughters and none of them were made as parties to the suit. She has admitted that no document is filed by her to show that her husband has started welding work shop. She also admitted that her sister Vijaya Lakshmi and her husband died about 16 to 17 years back. She has fairly admitted that schedule 'A' to 'T' properties are not in the name of her husband and they are not the ancestral properties. She has not filed any document to show that the suit schedule properties were

purchased out of the income derived from Srikanth Engineering Works. However, explained that all her sons worked together with her elder son and they have no separate income. This evidence of PW4, who is the mother of defendant Nos.2 to 4 and plaintiff has to be looked into and assessed in the light of allegations made by defendant No.2, that the plaintiff and defendant Nos.1, 3, 4 have colluded together only to knock away his properties. According to her evidence, the suit schedule properties are not the ancestral properties, they were not on the name of her husband. However, she tried to explain that all her sons worked together along with defendant No.2 and acquired the properties.

17. On behalf of contesting defendant, the defendant No.2 got himself examined as DW1 and filed his evidence affidavit in lieu of chief examination. In his evidence Exs.B1 to B8 documents are marked. Though this witness is cross-examined at length on behalf of the plaintiffs, nothing worth mentioning is elicited in the entire cross-examination and his evidence remained consistent to the effect that after the birth of defendant Nos.2 to 4 and

the plaintiff, when they were young, their father left their mother the 1st defendant and in-fact the first defendant herself performed the marriage of her sister Vijaya Lakshmi with her husband and they were blessed with three daughters. This evidence of DW1 further goes to show that the plaintiff has intentionally not made his real sister's children who died, as parties to the suit and also not made his step-sisters i.e. the daughters of his father through his second wife as parties to the suit. Whereas, DWs.2 and 3 are the independent witnesses, they were cross-examined on behalf of the plaintiff but nothing is elicited to disbelieve their evidence in support of the plaintiff's case.

18. The specific case of the plaintiff is that the suit schedule properties were acquired with the joint efforts of plaintiff and defendant Nos.2 to 4 from out of the earnings derived from the welding shop and they are the joint family properties but they were purchased on the name of defendant No.2, who was Karta of the family. It is also explained by defendant No.2 that as an elder son of their father, who married another woman and dissipated all of them, defendant No.2 took up the responsibility on his

shoulders, performed the marriages of his brothers, got them educated, but none of the brothers worked along with him in the welding shop. Though the plaintiff has asserted that Srikanth Welding Shop was started by his father during his lifetime in the premises owned by PW2, there is no acceptable evidence to that effect. As such, it can be safely concluded that there is no reliable evidence adduced on behalf of plaintiff to show that their father has started welding business, gradually the said business prospered and that with the income derived from the said business only the 2nd defendant has purchased the properties on his name.

19. The sale deeds in respect of suit schedule properties were filed by the defendants so also by the plaintiff. As per the sale deeds the schedule 'A' property is on the name of plaintiff, schedule 'B' to 'G' properties are on the name of defendant No.2 and schedule 'H' property is on the name of defendant No.3, schedule 'I' property is on the name of defendant No.4 and whereas it is the admitted case of the parties that 'J' schedule property was allotted on the name of 1st defendant. However, it is contended by

the defendant No.2 that with his own earnings he built a double bed room portion in the ground floor and single bed room portion in the first floor of 'J' schedule property and it is on the name of defendant No.1. Undisputedly except defendant No.2 all other parties are living in 'J' schedule property whereas, the second defendant is living in 'F' schedule property and doing business therein.

20. Whenever the plea of joint family property or acquisition of property with joint earnings from a business started by the joint family is raised, the burden is on the party, who asserts the same to establish or prove it. In the case on hand, the plaintiff has asserted that Srikanth Welding and Engineering Work Shop was started during the lifetime of his father and after death of their father the plaintiff and defendant Nos.2 to 4 worked together and defendant No.2 being the elderly member of the family acquired suit properties out of the income derived from the said welding shop. Admittedly, none of these schedule 'A' to 'I' properties were purchased during the lifetime of father of plaintiff and defendant Nos.2 to 4 and it was only after

demise of their father, the suit schedule properties were acquired.

21. On a careful perusal of the recitals in the documents in respect of schedule 'A' to 'I' properties nowhere it is mentioned that the sale consideration was paid from out of the income derived from the joint family business or that the parties were living as joint family members. In respect of schedule 'A' property, it is categorically mentioned that it was purchased by plaintiff. Similarly, in respect of schedule 'H' and 'I' properties it is mentioned that they were acquired by defendant Nos.3 and 4 only and in respect of schedule 'B' to 'G' properties, it is mentioned as they were acquired by defendant No.2 only. Thus, there is no proof to show that these properties were at any time enjoyed by plaintiff and defendant Nos.1 to 4 jointly.

22. As stated in the preceding paragraph, the suit schedule 'A' to 'I' properties were only acquired subsequent to the death of father of plaintiff and defendant Nos.2 to 4 through the registered sale deeds. The plaintiff has not

examined any of the attesting witnesses to these sale deeds to disprove the contents of the same or to explain different intention to the effect that though it is mentioned as self-acquired property or payment of consideration by the purchaser therein, but in-fact consideration was paid out of joint family funds or profits derived from joint family business. Therefore, in view of the principles laid under Sections 91 and 92 of Indian Evidence Act such a loose evidence of PWs.1 to 4 is not sufficient to contradict the contents of sale deeds in respect of schedule 'A' to 'T' properties and the same cannot be accepted. **(Roop Kumar, Appellant Vs. Mohan Thedani, Respondent¹).**

23. Therefore, for all the reasons stated above, all the points are answered against the plaintiff and in favour of the contesting defendant holding that there is no infirmity in the findings recorded by the Court below and the judgment and decree impugned does not warrant any interference by this Court.

¹ AIR 2003 SC 2418

24. In the result, the appeal suit is dismissed confirming the impugned judgment and decree dated 23.09.2015 in O.S.No.1475 of 2011 on the file of the learned Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar in its entirety.

However, in the circumstances of the case, there shall be no order as to the costs. Miscellaneous applications, if any pending, shall stand closed.

A.VENKATESWHARA REDDY, J

Dated : 02-12-2022
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