

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

A.S.NO.1931 of 2001

JUDGMENT :

The appellant herein is plaintiff in O.S.No.309 of 1995 on the file of II Addl. Senior Civil Judge, Warangal, and being aggrieved by the Judgment and Decree of the learned II Addl. Senior Civil Judge, Warangal, herein after will be referred as trial Court, the plaintiff has filed the present appeal.

2. Before going into the grounds on which the appellant preferred the appeal, it would be convenient to see what was the case of appellant before the trial Court. For convenience sake, the parties will be referred to as they are arrayed in the plaint before the trial Court.

3. The plaintiff is son of defendant No.1. Defendants No.2, 3 and one M.Chandraiah are brothers of defendant No.1. Defendants No.4 to 6 are sons of said Chandraiah. Defendants No.7 to 14 are strangers and no way concerned with the plaintiff or defendants. The plaintiff has claimed that the suit schedule properties are joint family properties of plaintiff and defendants No.1 to 6. Plaintiff and defendant No.1 together have got

1/4th share, Defendants No.2, 3 and Chandraiah have got 1/4th share each in the schedule property. Therefore, defendants No.4 to 6 being the sons of Chandraiah are entitled to the share. The plaintiff has further claimed that ever since his childhood, plaintiff, defendants No.1 to 6 have been in joint possession and enjoyment of suit schedule property namely land in Sy.No.477, 482, corresponding to new Sy.Nos.463 and 464. According to the plaintiff, there was no partition of the joint family properties among plaintiff and defendants No.1 to 6. The plaintiff further pleaded in his plaint that defendants No.7 to 14 having colluded together, hatched a plan to grab the suit schedule properties to the detriment of his right. He has also claimed that he was an employee in Food Corporation of India and due to the said employment, he was moving from one station to another and taking advantage of his absence in the place, defendants No.7 to 14 bent upon disrupting the suit land under some arrangement or other. He has also claimed that he has been demanding his father (D1) for partition of his 1/8th share in the suit land. But defendant No.1 was not cooperating since he was under the influence of Defendants No.7 to 14. The plaintiff claimed that he raised the issue before the caste elders and sought for partition of the

properties and for allotment of 1/8th share in the suit land in his favour. But the defendants No.1 to 6 did not come forward and delayed the matter, thereby he filed the suit and sought for partition of the properties and for allotment of his 1/8th share in the suit land.

4. Out of the 14 defendants, defendants No.1 to 9 remained *ex parte*. Defendant No.14 alone filed written statement with the following averments.

5. All the allegations in the plaint which were not specifically admitted by the defendant No.14 were false and deemed to have been denied by him. According to the defendant No.14, neither of the plaintiffs No.1 to 6 were in possession of the suit properties. Therefore, joint possession of plaintiff with defendants No.1 to 6 does not arise. The plaintiff is out of possession of the suit property, thereby, he could have paid actual court fees while seeking partition and allotment of his share. According to defendant No.14, the suit schedule properties and other properties were already partitioned among defendants No.1 to 4 vide O.S.No.4 of 1974 on the file of Prl. Munsif Magistrate, Warangal. Defendants No.1 to 4 were put in possession of their respective land vide orders in I.A.No.532 of 1974. He has also

claimed that after partition, Defendants No.1 to 4 sold their respective shares which are present suit schedule properties to the defendant No.14 (Society). Defendant No.14 purchased the share of defendant No.1 through an agreement of sale. Defendant No.14 cleared the bushes, divided the land into plots along with other lands and allotted the plots to its members who were put in possession of the property. The members who have purchased individual plots have constructed their respective houses in the year 1982-83 itself. Defendant No.14 has filed the map showing the division of plots and list of some persons who have constructed their houses with the details of year of construction in the suit land.

6. Defendant No.14 has further alleged that defendant No.1 sold his share to the defendant No.14 Society in the capacity of Kartha of the family and for the benefit of his family. He has spent the sale consideration for purchase of other immovable property for the benefit of his family members.

7. Defendant No.14 further alleged that during April - May, 1988, defendant No.1 and his legal heirs including the plaintiff, their agents made an attempt to interfere with the possession and enjoyment of defendant No.14 over the suit land.

Therefore, defendant No.14 filed a suit against defendant No.1 vide O.S.No.419 of 1988 on the file of II Addl. District Munsif, Warangal and obtained perpetual injunction on 11-07-1988. Therefore, defendant No.1 and his agents etc., were restrained from interfering with the possession and enjoyment of defendant No.14. The plaintiff has got knowledge about the suit and decree passed in favour of defendant No.14 vide O.S.No.419 of 1988. Defendant No.14 has further pleaded that to overcome the decree in O.S.No.419 of 1988, the plaintiff has filed the present suit by colluding with his father. He has also pleaded that during 1992 and 1993, when defendant No.1, plaintiff and their family members failed to disobey the decree in O.S.No.419 of 1988, defendant No.14 made a police report and police called plaintiff and defendant No.1 and advised them to obey the decree.

8. Defendant No.14 has further contended that there are some other properties apart from the suit schedule property which belongs to defendants No.1 to 4, but filing the suit in respect of only suit survey numbers leaving other joint family properties shows that it was only to harass and black mail defendant No.14 in view of the increase in the market value of the suit schedule

properties, thereby, defendant No.14 sought for dismissal of the suit.

9. The trial Court framed the following issues :

1. Whether the suit properties are the ancestral properties of the plaintiff and defendants No.1 to 6?
2. Whether the suit properties were partitioned in O.S.No.4 of 74 on the file of Principal District Munsiff, Warangal, among defendants No.1 to 4 and whether they were put in possession of their respective shares?
3. Whether after the alleged partition referred to in issue No.2, defendants No.1 to 4 sold their respective lands in favour of defendant No.14 society?
4. Whether the suit land is available for partition?
5. Whether the plaintiff is entitled for partition of the suit schedule properties?
6. To what relief?

10. During the trial, the plaintiff has been examined as PW.1 and he has marked Exs.A1 and A2 i.e., certified copies of pahanies for 1975-76 and 1990-91. DW.1 to DW.4 were examined on behalf of contesting defendant. Exs.B1 to B55 are marked on behalf of the defendants. The trial Court having heard both parties and after appreciating the oral and documentary evidence, dismissed the suit vide judgment and decree dated 31-01-2001.

11. The plaintiff/appellant has filed the present appeal on the following grounds:

The Judgment and Decree of the trial Court are contrary to facts of the case. The trial Court ought to have seen that admittedly, the suit schedule properties are ancestral properties, thereby the plaintiff is entitled to 1/8th share. But the trial Court rejected the claim of plaintiff on erroneous grounds of earlier partition between defendants No.1 and his three brothers to which the plaintiff was not a party, therefore, the judgment and decree is not final and binding on the plaintiff.

12. The trial Court committed an error by observing the plaintiff has got knowledge about the earlier partition when the suit schedule properties are ancestral properties in the absence of making all the share-holders as parties to the proceedings, the Judgment and Decree void-ab-initio. The appellant further claimed that the Court below ought to have seen that the defendants are not disputing the right and share of plaintiff in the suit property but pleaded about an earlier partition between defendant No.1 and his brothers but the said partition cannot be a ground to dismiss the suit filed by the plaintiff. He has also claimed that in a suit for partition all the share-holders are necessary and proper parties. If any proper party is not added to the suit, judgment and decree in such a suit are null and void, not binding the party who was not

added as party to the alleged partition. Therefore, according to the plaintiff, he is not a party to the previous partition between defendant No.1 and his brothers, even if there is any decree, such a decree is not binding upon him and still he is entitled to a decree for partition of the suit schedule property and for allotment of his share.

13. The plaintiff has filed the above referred suit seeking partition of suit schedule property on the ground that it was his ancestral property and he has got a right to claim partition. The plaintiff who was examined as PW.1 has claimed that there was no partition between the family members. Defendant No.1 is father of plaintiff, defendants No.2 and 3 are brothers of defendant No.1 and defendants No.4 to 6 are children of their other brother. Defendants No.1 to 9 remained *ex parte* before the trial Court. Defendant No.14 has filed W.S. and pleaded that there was partition between defendants No.1 to 4 vide O.S.No.4 of 1974 on the file of P.D.M. Warangal, and the parties were put in possession of the property vide order in I.A.No.532 of 1974. Subsequently, defendants No.1 to 4 sold their respective shares to defendant No.14 –Society. The statement filed by the defendant further shows that defendant No.4 society divided the land into house

plots and allotted the plots to its members. The members have constructed the respective houses in the suit schedule property during 1982-83 itself. The contesting defendants have claimed that defendant No.1 has sold his share to defendant No.14 as Kartha of the family and for the benefit of the family.

14. The plaintiff himself has been examined as PW.1 and he has marked Exs.A1 and A2 i.e, copies of pahanies for 1974-75 and 1990-91. DW.1 to DW.4 are examined on behalf of contesting defendants and they have marked Exs.B1 to B55. There is no dispute about the relationship between plaintiff and D1 to D9. As on the date of filing the suit, the plaintiff was aged about 37 years and he was working in F.C.I. The plaintiff has claimed that there was no partition. The plaintiff being an adult and Government employee and a resident of Hanumakonda cannot say that he has no knowledge about the previous suit and decree as well as final decree proceedings. PW.1 has claimed that he is in joint possession of the suit property. In fact, the documents filed by defendant No.14 vide Exs.B1 to B55 clearly shows that PW.1 and all the other family members are out of possession of the suit schedule property. As per the evidence of DW.3, it shows that the suit schedule properties were already partitioned between

defendant No.1 and his brothers. Final decree was already passed under Ex.B54. DW.3 is no other than the nephew of defendant No.1. Therefore, the evidence produced by defendant coupled with Exs.B1 to B55 proves that there was prior partition between defendant No.1 and his brothers and they have already sold their respective properties.

15. The learned trial Judge has accepted the oral and documentary evidence produced by the defendants. It seems the defendants have filed copy of the final decree along with the Bailiff report. There are no reasons for disbelieving the said record. The plaintiff has claimed that even though there is partition between his father and paternal uncles, the properties being ancestral properties, the said partition not binding on him. The documents filed by the contesting defendants coupled with the oral evidence clearly show that the properties were partitioned in view of the decree in O.S.No.4 of 1974. Therefore, when there was partition of the properties followed by delivery of respective shares, the question of again affecting partition does not arise.

16. The evidence brought on record clearly shows that defendant No.1 has sold his share to defendant No.14 society. The record further shows that defendant No.14 society has filed a suit

against defendant No.1 when he made an attempt to interfere with the possession of defendant No.14 vide O.S.No.419 of 1998 on the file of II Addl. District Munciff, Warangal and the suit was decreed in favour of defendant No.14.

17. The plaintiff during his evidence admitted that there are some houses in the suit property and he did not add the persons who are in possession of those houses as parties to the suit. According to his own evidence, the houses were constructed in 1986. He has filed the suit in 1995. Another important aspect to be noted is receipts filed by defendant No.14 vide Exs.B7 to B51. These receipts goes to show that defendant No.1 and also the plaintiff received money from the members of defendant No.14 society. Therefore, the plaintiff has got knowledge about the partition, he has signed the receipts when his father received money from the purchasers of site/plots from defendant No.14 society, which in fact purchased the share of defendant No.1. The plaintiff has got knowledge that the members who have purchased the plots, constructed houses prior to 1986 itself. Therefore, it clearly shows that as rightly observed by the trial Court, the plaintiff wanted to take a chance to lay a claim on the suit property only to pressurize the members of the society to extract money.

18. The evidence produced by defendant No.14 shows that the property was already partitioned. Defendant No.1 has sold the property long back. The defendant No.1 as well as plaintiff have received money for the property. Therefore, the contention of plaintiff that still the property is still joint family property and it is available for partition is nothing but false and the trial Court rightly dismissed his suit. Therefore, the appeal deserves to be dismissed.

19. In the result, the appeal is dismissed. No order as to costs.

Consequently, Miscellaneous applications if any, are closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 18.01.2023
PLV

