IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

THURSDAY ,THE THIRTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

SECOND APPEAL NO: 456 OF 2024

Appeal under Section 100 of C.P.C against the Judgment and Decree passed in AS No 63 of 2018 dated 08.05.2024 on the file of the VI Additional District Judge, Kurnool, by partly allowing the preliminary decree passed in OS No 573 of 2011 dated 03-07-2018 on the file of the Principal Senior Civil Judge Kurnool.

Between:

S. Bhaskar Reddy, S/o. Late S.Raghurami Reddy, Aged about 34 years, agriculturist, R/o.H.No.6/69, Orvakal village and Mandal, Kurnool, Kurnool District.

...Appellant/Respondent/Plaintiff

AND

1. S. Raghu Rami Reddy(Died By L.Rs), S/o S Samba Siva Reddy, Aged 60 years. Agriculturist, R/o.1/100, Orvakal village and Mandal Kurnool District
2. S Rameswaramma alias Shakunthalamma, W/o Late S Rami Reddy aged about 54 years, Housewife, Cultivation, R/o.D.No.1/100 Orvakal village and Mandal, Kurnool District.

...Appellants/defendants/Respondents

(Appellant No.2 is added as per orders in I.A.No.315/2019, dt.18-01-2021)

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondent not to alienate the item no. 1 and 2 of the suit schedule properties pursuant to Judgment and Decree passed in A.S.No. 63 of 2018 dt. 08.05.2024 on the file of the VI Additional District Judge, Kurnool, by partly allowing the appeal, pending disposal of the second appeal.

Counsel for the Appellant : SRI J JANAKIRAMI REDDY

Counsel for the Respondent No.2 : SRI VARUN BYREDDY

The Court made the following: JUDGMENT

APHC010301972024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3310]**
(Special Original Jurisdiction)

THURSDAY ,THE THIRTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO

SECOND APPEAL NO: 456/2024

Between:

S. Bhaskar Reddy **...APPELLANT**

AND

S Raghu Rami Reddydied By L Rs and Others **...RESPONDENT(S)**

Counsel for the Appellant:

1.J JANAKIRAMI REDDY

Counsel for the Respondent(S):

1.VARUN BYREDDY

The Court made the following:

JUDGMENT:

The present Second Appeal is preferred by the appellants aggrieved by the Decree and Judgment dated 08.05.2024 passed in A.S.No.63 of 2018 on the file of the VI Additional District Jduge, Kurnool by parly allowing the preliminary decree passed in O.S No.573 of 2011 dated 03.07.2018 on the file of the Principal Senior Civil Judge, Kurnool

2. The appellant herein is plaintiff and the respondents herein are the defendants in O.S.No.573 of 2011 on the file of Principal Junior Civil Judge, Kurnool (for short "the trial Court").

3. For convenience the parties are hereinafter referred to as arrayed before the Principal Senior Civil Judge, Kurnool (for short "the trial Court") in O.S..No.573 of 2011.

4. Brief facts of the case are that the plaintiff is the son of the defendant. He is co-parcener along with the defendant constitute Hindu undivided joint family. The plaint schedule property is undivided joint family property which is the ancestral property. The plaintiff and the defendant are in joint possession and enjoyment of the plaint schedule property. The parties to the suit as coparceners have unchallenged half share in the suit schedule property. Sambhasiva Reddy who is grandfather of the plaintiff died about 1990 and the suit schedule property came into possession after division among the children of Sambhasiva Reddy. The plaintiff was demand on or about 15.09.2011 for division of the suit schedule property into two equal shares and to allot respective share to the plaintiff. Later, the defendant promised to effect the division by 20.09.2011, but he did not keep up his promise. Therefore, the plaintiff filed the suit in O.S HNo.573 of 2011.

5. The defendant filed his written statement and denied that the plaintiff is in joint possession with him. In fact, the plaintiff is residing with his mother in Bijanur village, whereas tne properties are in the Orvakal and this fact discloses that the plaintiff is neither in joint possession nor notional possession of the properties. It is stated that Item No.1 of the plaint schedule property does not

belongs to this defendant. It is the property of Sakunthalamma @ Rameswaramma and she got from the government under Indiramma Pathakam and it is also not liable for partition. Further, the mother of the plaintiff deserted the defendant since 1986 without any reason. This defendant got two sons by name Bharath Kumar Reddy and Siva Sankar Reddy through his kept mistress Sakunthalamma @ Rameswaramma who has also got share in the plaint schedule property of Item No.2 of the plaint schedule. The item No.2 of schedule property was acquired by the funds supplied by Sakunthalamma @ Rameswaramma and thus, this property belongs to Sakunthalamma @ Rameswaramma. In fact, the said land was given on lease to one Chenna Naik for 15 years under Regd. Lease deed and it is not liable for partition and the suit is liable for dismissal. Without prejudice in the rights of this defendant, he submitted that the plaintiff is not at all entitled in the item Nos 3 and 4 of the property and the other sons through Sakunthalamma @ Rameswaramma were also entitled the share in the properties. Hence, he prays to dismiss the suit with costs.

6. Basing on the above pleadings, the trial Court framed the following issues for determination:

1. Whether the plaintiff is entitled for partition of the schedule mentioned property into two equal shares and to allot one such share to the plaintiff as prayed for ?
2. Whether the schedule mentioned property is the exclusive property of Sakunthalamma @ Rameswaramma as contended by the defendant in his written statement?
3. To what relief ?

7. During the course of trial, PWs.1 to 3 were examined and Ex.A1 and Ex.A2 were marked on behalf of the plaintiff. On the defendant' side, the defendant alone was examined as DW.1 and marked Exs.B1 to 87.

8. After careful appreciation on record the trial Court decreed the suit as prayed for. Aggrieved by the same, the defendant preferred A.S No.63 of 2018 before the first appellate Court stating that the trial Court has not considered the evidence and probabilities of the case facts and has not properly appreciated the contention of the defendant and that the original suit was mainly for partition of the plaint schedule properties. Since the sole appellant/defendant died, his legal representative has come on record as second appellant. The first appellate Court has partly allowed the Appeal Suit while setting aside the decree and judgment of the trial Court dated 3.7.2018 in O.S No.573 of 2011 so far as the plaint schedule item Nos. 1 and 2 properties concerned and dismissed partly confirming the decree and judgment of the trial Court in so far as the plaint schedule item Nos.3 and 4 of properties concerned. Challenging the same, the present second appeal came to be filed by the appellant/plaintiff.

9. Heard Sri J. Janaki Rami Reddy, learned counsel appearing for the appellant and Sri Varun Byreddy, learned counsel appearing for the respondents.

10. Learned counsel for the appellant has urged in the grounds of appeal as the following substantial questions of law (2 & 4 mentioned in the grounds) arisen for determination of the second appeal :

> 2) Whether the first appellate Court and properly appreciated the question of law in partition of ancestral properties of father of appellant and wrongly applied the General rules of succession in the case of males U/s 8 of Hindu Succession Act.

4) Whether the coparcenary property acquired by male Hindu members of the family above four degrees of ascendants i.e., father, paternal grandfather, great paternal grandfather, and ascendants property can be only treated as ancestral properties and appellant not entitled for partition if the properties are purchased by grandfather i.e., item No.1 and 2 of plaint schedule properties.

11. This Second Appeal is filed under Section 100 CPC on the ground that the judgment and decree of both courts below is totally basing on the presumption, surmises and conjectures, ignoring the material facts available on record and interpretation of law.

12. There cannot be any dispute that. under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys – of having substance, essential, real, or sound worth, important, considerable, fairly arguable, in contradiction with – technical, formal, or no substance, no consequence or academic only. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non consideration of relevant or admissible evidence; taking into consideration

irrelevant or inadmissible evidence; perverse finding- are some of the questions, which involve substantial questions of law.

13. According to Section 100 CPC, a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the Code of Civil Procedure introduced such an embargo for such definite objectives and since the Courts are required to further probe on that score and the Courts while detailing out, but the fact remains in second appeal finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court will be within its jurisdiction to deal with the issue. The High Court can interfere with such finding recorded by the trial Court though not on law in view of judgment reported in **Kulavant Kaur v Gurdial Singh Mann**[1]

14. Keeping in mind the scope of Section 100 CPC, I would like to decide the present appeal at the stage of admission.

15. Learned counsel for the appellant contended that first appellate Court erred in partly allowing the appeal pertaining to item Nos. 1 and 2 of the plaint schedule property and failed to see that the entire plaint schedule property i.e., item Nos. 1 to 4 are undivided Hindu joint family property which is ancestral property liable for equal share for appellant/plaintiff and respondent/defendant who is son and father respectively. He submits that the first appellate Court

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[1] 2001 (4 SCC 262

failed to see that as per Ex,.A1 i.e, Adangal for the fasli 1420, the plaint schedule properties are in the possession of the Sambasiva Reddy who is grandfather of the plaintiff and the father of the respondent and the respondent did not file any documents or oral evidence to show that item No.s1 and 2 are self acquired properties to reverse the trial Court judgment and partly allowing the decree. He further submits that the first appellate Court failed to appreciate properly the pleadings and the evidence by partly allowing the appeal and setting aside the well considered judgment pertaining to item Nos.1 and 2 of the plaint schedule properties. Therefore, the judgment under first appeal is contrary to law, weight of evidence and probabilities of the case, if it is allowed to stand. it would occasion in grave miscarriage of justice. Therefore, prayed to allow the second appeal by setting aside the judgment of the first appellate Court.

16. *Per contra*, learned counsel for the respondents argued that the parties to the suit as coparceners have unchallenged half share in the suit schedule property. Sambasiva Reddy who is grandfather of the plaintiff died about 1990 and the suit schedule property came into possession after division among the children of Sambasiva Reddy. He further submits that a demand was made by the respondent/plaintiff for division of the suit schedule property into two equal shares and to allot respective share to the plaintiff and that demand was also made in the presence of elders who also advised to appellant/defendant to settle out of the Court. Accordingly, the appellant/defendant already promised to effect the division of the property.

17. To support his contentions, learned counsel for the respondent has drawn attention of this Court to the judgment of Hon'ble Supreme Court reported

in **Satish Vishanji Fatnani v. Mohanlal Dungarmal Futnani and Ors.**[2], wherein the Apex court held in para No.4 that:

> So far as the first contention is concerned, it is not in dispute, that the appellant is the son of the caveator and the grand-son of the testator. However, so long as the caveator is alive, his son, the appellant, cannot be claimed to be an heir at law, even if the deceased had died intestate. Under Section 8 of the Hindu Succession Act, it is only the son who can claim to succeed to the father as Class I heir and the grand-children of the deceased cannot claim to be class I heirs. Therefore, the fact that the appellant is a son of the caveator and a grandson of the testator will not clothe him with a caveatable interest.

18. As seen from the judgment of the trial Court, it is observed that, there is no dispute with regard to relationship between the plaintiff and the defendant. The plaintiff is claiming that the plaint schedule properties are ancestral properties and that he is having a right of equal share. In his cross examination, PW.1 admitted that his grandfather sold Ac.0.15 cents out of Ac.1.75 cents in Sy.No.198. He further admitted that his father had three other brothers including himself and they were partitioned from family properties. He further admitted that the defendant got Ac.0.41 cents in Sy.No.198 in the partition. PW.1 exhibited Ex.A1 No.3 adangal for the fasli 1420. On perusal of the said document, the possessor is Sambhasiva Reddy, grandfather of the plaintiff and the enjoyer is the defendant by name Raghu Rami Reddy. In Sy.No.156 Ac.0.46 ½ cents, in, Sy.No.198 Ac.0.41 cents and in Sy.No.337 Ac.1.12 cents are in the enjoyment of the defendant. The actual extents in Sy.No.156 is Ac.2.78, Sy.No.198 is Ac.5.94 and Sy.No.337 is Ac.17.14. Thus, on perusal of Ex.A1 it is clear that the properties are the ancestral properties.

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[2] 1985 0 Supreme (Mad) 245

19. As stated by learned counsel for the respondents that, in the instant case, since the plaint schedule item Nos.1 and 2 properties were devolved upon the defendant from his father under Section 8 of Hindu Succession Act, the property ceased to be joint family property. therefore, the law laid down by the Hon'ble Supreme Court referred to above, it clearly held that under Section 8 of Hindu Succession Act, it is only the son who can claim to succeed to the father as Class-I legal heir and the grand children of the deceased like plaintiff in this case cannot claim to be Class-I heir. Under these circumstances, it can be clear that the suit schedule item Nos.1 and 2 properties cannot be characterized as ancestral properties and thus the plaintiff/appellant has no right to claim in it.

20. It is also observed that, the recital in Ex.A3/No.3 Adangal for the Fasli 1420 goes to reveal that the grandfather of the plaintiff is possessor and the defendant/respondent is the enjoyer of the property. Moreover, the plea of the defendant/respondent that the appellant/plaintiff has no share in the plaint schedule item Nos.3 and 4 properties. After perusal of the facts, it is stated that, the platen schedule item Nos.3 and 4 properties are the ancestral properties of the plaintiff/appellant and the defendant/respondent who are having equal share in it. Therefore, the first appellate Court rightly concluded that the plaintiff/respondent certainly entitled for partition of the plaint schedule item Nos.3 and 4 of properties, and however he has no right to claim any share in the plaint schedule items Nos.1 and 2 which were devolved upon the defendant/respondent under Section 8 of Hindu Succession Act.

21. In the light of the settled position of law and in the light of the findings of fact given by the Courts below, and as there is no other substantial question of

law to be considered by this Court, I do not find any valid ground either to remand the matter to the first appellate court or to set aside the judgment of the court below.

22. For the above-mentioned reasons, I do not find any reason to interfere with the well-considered judgment of the first appellate Court.

23. Accordingly, the Second Appeal is dismissed at the stage of admission. No order as to costs. As a sequel, all the pending miscellaneous applications shall stand closed.

Sd/- M RAMESH BABU
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to the Honourable Dr Justice K. MANMADHA RAO
(For His Lordships kind perusal)

To,

1. The VI Additional District Judge, Kurnool, Kurnool District
2. The Principal Civil Judge (Senior Division), Kurnool, Kurnool District
3. One CC to Sri. J Janakirami Reddy Advocate [OPUC]
4. One CC to Sri. Varun Byreddy Advocate [OPUC]
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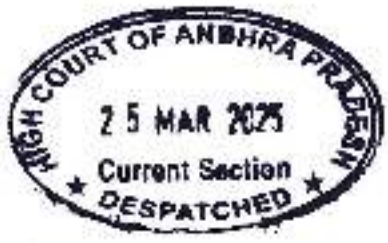
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HIGH COURT

DATED:13/03/2025

JUDGMENT

SA.No.456 of 2024



DISMISSING THE SECOND APPEAL AT THE STAGE OF ADMISSION WITHOUT COSTS