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Court : Andhra Pradesh

Decided On : Sep-04-1997

Reported in : 1998(5)ALD740

Judge : Krishna Saran Shrivastav, J.

Acts : Hindu Law

Appeal No. : A. No. 715 of 1985

Appellant : Ambati Ramakumar and Another

Respondent : A.V. Chalamappa Setty and Others

Advocate for Def. : Mr. V. Ravinder Rao and ;Mrs. Sesha Rajyam, Advs.

Advocate for Pet/Ap. : Mr. N.V. Suresh, Adv.

Judgement :

ORDER

1. Plaintiff's are the appellants. Their suit for partition and separate possession has been partly dismissed.

2. The 1st defendant is the father of the 2nd defendant and grand-father of the plaintiffs. PW3 is his brother while PW2 is his nephew. Item No.6 of the Plaint 'A' Schedule property was allotted to the 2nd defendant in Ex.DI, dated 2-6-1958. The remaining Plaint 'A' Schedule properties, that is Items 1 to 5 allotted to the 1st

defendant have been sold to the defendants No.3 to 5 through separate sale deeds, by him.

3. The plaintiffs filed a suit for their 2/5th share in the Plaint 'A' and Plaint 'B' Schedule Properties, alleging that these properties belong to the Joint Hindu Family consisting of the plaintiffs, their father, that is the second defendant and their grand-father, the first defendant. The 2nd defendant has got 1/10th share in them while the 1st defendant has got half share in them. Their father, that is the 2nd defendant, was a man of feeble-mind and was easily gullible. He was mentally sick also. The 1st defendant being a shrewd man obtained a relinquishment deed, Ex.DI, on 2-6-1958 from their father, that is the Defendant No.2. He had executed nominal sale deeds in favour of defendants No.3 to 5. The relinquishment deed, Ex.DI, is not binding on them. Therefore, their share should be declared as 2/5th in the Plaint 'A' and 'B' Schedule Properties and the properties should be divided by metes and bounds and they should be placed in the properties allotted to them.

4. The 4th defendant denied the claim of the plaintiffs. He pleaded that, there is no property in existence as mentioned in the Schedule 'B' of the Plaint while the Plaint 'A' Schedule properties were the self acquired properties of the 1st defendant. Even so, on 2-6-1958, the 1st and the 2nd defendants divided the Plaint 'A' Schedule Properties into two equal halves. They also divided the cash and the ornaments. Item No.6, that is the house property, valued Rs.10,000/- and Rs.6,500/- in cash and the ornaments weighing 50 tulas valued at Rs.5,000/-, total valuation Rs.21,500/-, fell to the share of the 2nd defendant while two houses and one open site, 50 tulas of gold and Rs.6,500/- in cash, total valuation Rs.21,500/-, fell to the share of the 1st defendant. He later constructed two more houses on the open site and both of them executed the relinquishment deed, Ex.DI, and got it registered. The sale deeds executed in favour of the Defendants No.3 to 5 are all valid and the 1st defendant had executed them after receiving adequate consideration. They are bona fide purchasers for value.

5. The 2nd defendant remained absent after service of summons and he was proceeded ex parte. The remaining defendants adopted the written statement of the 4th defendant.

6. On assessment of the evidence on record, the trial Court reached the conclusion that the deed, Ex.DI, dated 2-6-1958, is actually a partition deed through which the properties belonging to the Joint Hindu Family were equally divided into two halves. The 2nd defendant was allotted the Plaint 'A' Schedule Properties, while the 1st defendant was allotted the Plaint 'B' Schedule Properties of the deed, Ex.DI. Though the Deed was styled as 'relinquishment deed', but actually it was a 'partition deed'. The Trial Court further found that, even otherwise, the 2nd defendant has relinquished his share in the Plaint 'B' Schedule Properties of the Deed, Ex.DI, against adequate consideration and, therefore, it is not only binding on him, but also on the plaintiffs. Taking that view, the trial Court declared the share of the plaintiffs in Item No.6 of the Plaint 'A' Schedule Properties which was allotted to the 2nd defendant in the partition deed, Ex.DI, and passed a preliminary decree to this extent, but dismissed the suit in respect of the remaining Plaint 'A' Schedule and Plaint 'B' Schedule Properties.

7. Feeling aggrieved by the impugned judgment and decree, the plaintiffs have preferred this appeal.

8. It is urged on behalf of the appellants that, from the evidence of PWs 1, 2 and 3, it is established that in the partition effected amongst the 2nd defendant and his brother, PW2, and the other brothers, the 1st defendant had got 200 tulas of gold, 5-6 Kgs. of silver, cash amount of Rs.10,000/- and 200 acres of land. A Kirana shop also fell to his share. The 1st defendant carried the business along with DW2 and taking advantage of his disability, he allotted only a house which is Item No.6 of the Plaint 'A' Schedule Properties in Ex.DI, and separated him. The falsity of the relinquishment deed, Ex.DI, is established on account of the fact that the properties partitioned have been shown as self-acquisitions of the 1st defendant. Had it been the self-acquired property of the 1st defendant, the question of obtaining the relinquishment deed from the 2nd defendant and allotting him a house would never have arisen. It is also urged that the allotment was unequal. The alleged relinquishment deed may be binding on the 2nd defendant, but not on the appellants because they were coparceners and the 2nd defendant had no right to relinquish their interest in the Joint Hindu Family.

9. On the other hand, it is contended on behalf of the respondents that, the 1st defendant had obtained only 13 acres of agricultural land and 60 tulas of gold at the time of partition with his brothers. A shop was allotted to him but with liabilities. The lands were not useful and, therefore, they were sold between the years 1938 to 1940. The business ran in losses. The 1st defendant carried on the business after taking loan and purchased three houses and an open plot. He lent Rs. 12,000/- to his son who had started cloth business, but the shop had to be closed down because it suffered losses. After deducting Rs. 12,000/- from the total assets, a partition was effected at the instance of the 2nd defendant in which one house worth Rs.10,000/-, jewellery worth Rs.5,000/- and cash Rs.6,500/- were allotted to him while 50 tulas of gold valued at Rs.5,000/-, cash of Rs.6,500/- two houses and open site were allotted to the 1st defendant who later on constructed two houses on the open plot. He had married his five daughters after doing business separately and taking the loan as also by selling jewellery. He had sold for adequate consideration the immovable properties that were allotted to the Defendants No.3 to 5. There was no property with the 1st defendant as mentioned in the Plaint 'B' Schedule Properties. Though the deed was styled as relinquishment deed, actually it was a partition deed. It is further contended that even if it is assumed that the deed is a relinquishment deed, it is binding on the plaintiffs because their father, that is the 2nd defendant has relinquished the share in the Plaint 'B' Schedule Properties of the relinquishment deed, Ex.DI, against consideration. The Trial Court has correctly assessed the evidence on record and, therefore, the appeal deserves to be dismissed.

10. PW1 has stated on oath that, regarding the properties allotted to the 1st defendant at the time of partition between him and his brothers, he has got information from PW2 A. Venkalaramanappa, PW2, has deposed that in the year 1926 in the partition effected between him and his brothers, 200 tulas of gold, 5 to 6 Kgs. of silver, Rs.10,000/- in cash and 200 acres of land had been allotted to the 1st defendant as also to each brother. But, no documentary evidence has been filed in an attempt to establish that 200 acres of land were allotted to each brother including the 1st defendant. The evidence of DW1, who has stated that 13 acres of land, a Kirana shop and 60 tulas of gold had been allotted to him as also to his other brothers, has been preferred to the evidence of PW2, by the trial Court. The

other witness, PW3, is the nephew of PW2 and DW1. His statement that he had seen 200 to 300 tulas of gold and 5 to 6 Kgs. of silver with the 1st defendant was not accepted by the trial Court.

11. In the case of Madhusudan Das v. Narayani Bai, : [1983]1SCR851 it has been held as follows:

'When the appellate Court considers an issue turning on oral evidence, it must bear in mind that it does not enjoy the advantage which the trial Court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate Court should permit the findings of fact rendered by the trial Court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial Court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies.'

12. The evidence of PW3 appears to be improbable because he has stated that 200 or 300 tulas of gold had been seen by him with the 1st defendant. It appears to be his guess work because he does not claim that the gold was weighed at any time and there appears to be no occasion for this witness to see the gold and silver of the 1st defendant. The trial Court had the opportunity to watch the demeanour of the witnesses of the appellants as also of the 1st defendant. The learned Counsel of the appellants could not bring to my notice any special feature about the evidence of any witness that has escaped the notice of the trial Court. Under these circumstances, I am not inclined to take a contrary view to hold that the 1st defendant was allotted 200 acres of land, 200 tulas of gold, 5-6 Kgs. of silver and Rs. 10,000/- cash at the time of partition in the year 1926.

13. I get from the evidence of DW1 that he had sold 13 acres of land that had fallen to his share and from the consideration he has received he started his business in Kirana shop and cloth. He was also given 60 tulas of gold at the time of the partition. Because there was nucleus available, agreeing with the trial Court. I hold that three houses, and open house-site plot were the properties of the Joint Hindu Family consisting of the 1st defendant and his son, that is the 2nd

defendant and this Joint Hindu Family also owned one Kirana shop and one cloth shop which ran into losses. This Joint Hindu Family also possessed Rs.13,000/- in cash after payment of Rs.12,000/- or so.

14. In the case of Alluri Venkatapathi Kaju and another v. Dantuhuri Venkatanarasimha Raju and others, AIR 1936 Privy Council 264 it is held that, the father of a Joint Family had the power to divide the family at any time during his life time without the consent of his sons and if he makes a division, it has the effect of separating not only the father from his sons but also the sons inter se.

15. In the case of Kandaswami v. Doraswami Ayyar, (1878-80) 2 Mad. 317 and Murugayya v. Palaniyandi, (1916) 63 C 507, the whole meaning of Mitakshara is reviewed. These were the cases of partition of joint ancestral property. It is clear that a father can during his life time partition his self-acquired property amongst his sons. He can make a partition for the benefit of his sons of his self-acquired property.

16. The 1st defendant may be under an erroneous conception that the aforementioned properties belonged to him because he himself had purchased them, though he had sold the ancestral land earlier. Under these circumstances, mentioning the Plaintiff 'A' and 'B' Schedules as his self-acquisitions in the deed, Ex.DI, appears to be wholly in consequential. There appears to be no substance in the contention of the learned Counsel of the appellants that the self-acquired properties cannot be partitioned between the father and the son.

17. A careful reading of the deed, Ex.DI, reveals that, in places more than one, it has been mentioned that, 'A' and 'B' Schedule Properties of this document have been partitioned between the first defendant and the 2nd defendant. The valuation of each item has been given and the properties of equal value have been divided into two halves. There is evidence on record that, the plaintiffs are residing with the 2nd defendant who has been proceeded ex parte. The plaintiffs did not examine their father that is the second defendant who would have been the best witness for the appellants-plaintiffs to state under what circumstances the partition had taken place as also regarding the alleged unequal shares between him and his father. There is no acceptable evidence on record that the 2nd defendant was

a man of fluctuating mind or was ever mentally sick. It appears immaterial whether the 1st defendant had invested Rs.6,500/- for construction of the two houses on the open house-site or more, because, after separation, in case a person constructs houses, it cannot be presumed that he had spent the amount which he possessed before the date of partition, without any material on record.

18. It is too well settled that the question whether in any particular case, the document is a mere deed of relinquishment or a deed of partition, is to be decided on the facts and circumstances of each case. The nomenclature given to a document is not conclusive because the true nature of a document can be disguised by labelling it as some other thing else. The effect of partition is that, the parties to the partition cease to be the owner of the property that is allotted to the other party. To put it differently, it means that, one party relinquishes his share in the property which is allotted to the other party to the document. There is evidence on record that, after 2-6-1958, the 1st defendant and the 2nd defendant had started living separately. For the sake of argument, if it is assumed that, more immovable property was allotted to the 1st defendant, even then, it cannot be said that the partition was unequal for the simple reason that the 1st defendant had to marry four daughters at that time and he had performed their marriages in the coming years.

19. It would be beneficial to reproduce the following passage from N.R. Raghavachariar's Hindu Law 7th Edn. Vol. I Page 392 :

'A renunciation by a member of Joint Hindu Family having sons at the time of renunciation cannot bind the sons or have the effect of separating them from the other members of the Joint Family unless a renunciation is for consideration representing the value of the share, of the Branch of the member renouncing and can be considered as partition of his branch including the interest of his sons in the branch.' (Underlining is mine)

20. Even if the deed, Es.DI, is treated as a deed of renunciation or relinquishment, it is binding on the appellants, because, their father, that is the 2nd defendant, had relinquished the share for consideration representing the value of the share of his branch and thus it is binding on the appellants also because it can be legally

considered as a partition of his branch including the interest of the appellants in the Joint Hindu Family.

21. In the case of Mahalingayya Basappayya Ullagaddimath v. Sangayya Chennayya Ullagaddimath, AIR (30) 1943 Bom. 397, a Division Bench of the Bombay High Court found that Charmabasapayya had given up his rights over the Joint properties as a surrender of the rights of management and not as an absolute surrender of the entire interest in the estate. The question whether the two brothers really intended to separate would depend not merely on the act of formal renunciation, but upon their intention as gathered from their conduct. In this case, the relinquishing coparcener did not cease to enjoy the profits of the estate, but he continued to live as before in the family house, whereas in the case on hand, as noted above, there is evidence on record that not only the 2nd defendant had relinquished his share in the 'B' Schedule Property of the deed, Ex.DI, against consideration, but also the deed was acted upon, because, he had started living separately from his father, that is the 1st defendant.

22. In the case of Alluri Venkatapathi Raju and another v. Dantuluri Venkatannara Raju and others, (supra), it is held that the relinquishing coparcener when does not receive any share in the estate but renounces his interest therein, his renunciation merely extinguishes his interest in the estate, but does not affect the status of the remaining members quo-ad the family property. Such is not the case here, because, the 2nd defendant, as noted above, had taken his due share at the time of separating himself.

23. For the foregoing reasons, I see no merit in this appeal and, therefore, it is dismissed. The appellants shall pay the requisite Court fees of Rs.1,746A (Rupees One Thousand Seven Hundred Forty-Six Only), which would have been paid by them if they had not been permitted to institute the appeal as indigent persons, to the Government of Andhra Pradesh. However, in the circumstances of the case, the parties are directed to bear their costs of the appeal.