

Chenna Reddy Vs. D. Venkata Reddy

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Court : Andhra Pradesh

Decided On : Sep-26-2003

Reported in : 2004(1)ALT406

Judge : P.S. Narayana, J.

Acts : Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 - Sections 2(6)

Appeal No. : Second Appeal No. 139 of 2003

Appellant : Chenna Reddy

Respondent : D. Venkata Reddy

Advocate for Def. : R.V. Subba Rao, Adv.

Advocate for Pet/Ap. : P. Sridhar Reddy, Adv.

Disposition : Appeal dismissed

Judgement :

P.S. Narayana, J.

1. The appellant herein, Chenna Reddy, the 1st defendant in O.S.No. 60/92 on the file of Principal junior Civil Judge, Hindupur and 1st respondent in A.S.No. 27/99 on the file of Senior Civil Judge, Hindupur, had preferred the present Second

Appeal, aggrieved by the reversing Judgment and decree made in A.S.No. 27/99 on the file of Senior Civil Judge, Hindupur.

2. The respondent herein, Venkat Reddy filed O.S.No. 60/92 on the file of the Principal Junior Civil Judge, Hindupur for the relief of permanent injunction relating to the plaint schedule property as against defendants 1 to 3. The 3rd defendant was set ex parte. The appellant -- 1st defendant filed written statement and an adoption memo was filed by the 2nd defendant.

3. On the strength of the respective pleadings of the parties, Issues were settled. In the Court of first instance, on behalf of the respondent/plaintiff, P.W.1 to P.W.3 were examined and Exs.A-1 to A-5 were marked. Likewise, on behalf of the defendants 1 and 2, D.W.1 to D.W.3 were examined and Exs.B-1 to B-8 were marked. On appreciation of the oral and documentary evidence, the Court of first instance had dismissed the suit, with costs. Aggrieved by the said Judgment and decree, the plaintiff had carried the matter by way of Appeal A.S.No. 27/99 on the file of Senior Civil Judge, Hindupur and the appellate Court had allowed the appeal with costs, setting aside the Judgment and decree of the Court of first instance. The 1st defendant/1st respondent, aggrieved by the same, had preferred the present Second Appeal.

4. Sri Sridhar Reddy, the learned Counsel representing the appellant had pointed out to substantial questions of law which had been raised in the Second Appeal. The learned Counsel also had taken me through the findings recorded by the Court of first instance and the findings recorded by the appellate Court. The learned Counsel also pointed out that the appellate Court had totally erred in arriving at the conclusion that the appellant is a stranger and not a member of the family and hence the deceased had no right to Will away the property which had been assigned to him. The learned Counsel also had taken me through the provisions of A.P. Assigned Lands (Prohibition of Transfer) Act 1977, hereinafter in short referred to as 'Act' for the purpose of convenience. The learned Counsel also had contended that the expression 'family' is not defined under the Act and had drawn my attention to the definition of the word 'family' in Websters Dictionary. While elaborating his submissions, the learned, Counsel also had taken me

through the evidence of D.W.1 and D.W.2 and had pointed out that Ex.B-1 was proved in accordance with law and the appellate Court had totally erred in reversing the well considered Judgment and decree of the Court of first instance. The learned Counsel also contended that the mere mutation in revenue records may not be of any consequence since by virtue of these documents, it cannot be said that the respondent/plaintiff has title to the suit property. Reliance was placed on Nagar Palika v. Jagat Singh : [1995]3SCR9 and Y. Vijayabharathi v. Y. Manikyamma : 1998(2)ALT623 .

5. Per contra, Sri Prasad, the learned Counsel representing the respondent/appellant/plaintiff made the following submissions. The learned Counsel would maintain that there is no controversy relating to the relationship of the parties. The learned Counsel also further submitted that the 3rd defendant and the plaintiff are the family members and also the nature heirs of the deceased in whose favour the land was assigned. The learned Counsel also had drawn my attention to Ex.A-3 and had pointed out to the contention relating to heritability and non-alienability of the property assigned in favour of the deceased. The learned Counsel further contended that though testamentary disposition may be permissible under the Act, such disposition cannot be made in favour of a stranger to the family and hence Ex.B-1 is invalid and it does not confer any right whatsoever on the appellant. The learned Counsel also had taken me through the findings recorded by the appellate Court and had submitted that even otherwise, Ex.B-1 was not proved in accordance with law. The learned Counsel also had placed strong reliance on K.Yesuratnam v. Commissioner, Land Revenue, Hyderabad 1993(2) APLJ 444.

6. Heard both the Counsel at length and also perused the oral and documentary evidence available on record and the findings recorded by the Court of first instance and the appellate Court.

7. The pleadings of the respective parties, in short, are as hereunder:

The respondent/plaintiff had pleaded that one Narayanappa is the original owner of the schedule property and he got patta in his favour. The 3rd defendant is the brother of the said Narayanappa and father of the plaintiff. Narayanappa was in possession and enjoyment of the schedule property during his lifetime and after

his death, the plaintiff and the 3rd defendant succeeded to the property and they are in possession and enjoyment of the same. The plaintiff's name is mutated in revenue records. Defendants 1 and 2 have nothing to do with the schedule property and are trying to interfere with the peaceful possession of the schedule property.

8. As already stated supra, the 3rd defendant was sailing with the plaintiff, but however he was set ex parte. The appellant/ 1st defendant filed a written statement and an adoption memo was filed by the 2nd defendant. It was pleaded in the written statement by the appellant/1st defendant as hereunder:

9. During the lifetime of Narayanappa, he executed a registered Will dated 23-1-1985 in favour of the 1st defendant in respect of all his properties including the schedule property. The 1st defendant was enjoying the schedule property along with Narayanappa during his lifetime. After his death, the 1st defendant came into possession of the schedule property and cultivating the lands and was paying land revenue. The 1st defendant is not aware of mutation of name of the plaintiff in the revenue records. The mutation in favour of the plaintiff does not confer any right over the schedule property. The plaintiff and the 3rd defendant are not in possession and enjoyment of the suit property. The plaintiff is not a legal heir of late D.Narayanappa.

10. On the respective pleadings of the parties, the following Issues were settled:

- (1) Whether the plaintiff is entitled for permanent injunction as prayed for?
- (2) Whether the plaintiff is not the legal heir of late D.Narayanappa?
- (3) Whether the 1st defendant is entitled for the suit schedule property by virtue of a will dated 23-1-1985?
- (4) Whether the suit for mere injunction without declaration of right and title is not at all maintainable?
- (5) To what relief?

11. On behalf of the respondent/plaintiff, P.W.1 to P.W.3 were examined. P.W.1 is the plaintiff in the suit and P.W.2 and P.W.3 are residents of Chilamathur. Ex.A-1 is a certified copy of chitta. Ex.A-2 is the Adangal. Ex.A-3 is the duplicate D Form patta in the name of Narayanappa. Ex.A-4 is the patta standing in the name of the plaintiff and Ex.A-5 is 10(1) account. Likewise, on behalf of the appellant/defendant, D.W.1 to D.W.3 were examined and Exs.B-1 to B-8 were marked. D.W.1 is the appellant/1st defendant and D.W.2 is the 2nd defendant. D.W.3 is a resident of Chalivendala. Ex.B-1 is the registered sale deed dated 23-1-1985 executed by Narayanappa. Ex.B-2 is a copy of the notice date 11 -11 -1991. Exs.B-3 and B-4 are postal acknowledgments. Ex.B-5 is the land revenue receipt in the name of Narayanappa. Exs.B-6 and B-7 are the land revenue receipts in the name of the appellant/1st defendant. Ex. B-8 is the notice issued by the Mandal Revenue Officer dated 27-6-1992. The Court of first instance, on appreciation of the oral and documentary evidence, by its Judgment and decree dated 21-5-1999 had dismissed the suit and aggrieved by the same, the plaintiff preferred A.S.No. 27/99 on the file of Senior Civil Judge, Hindupur and the appellate Court had reversed the Judgment and decree on 24-10-2002 and aggrieved by the same, the 1st defendant/1st respondent preferred the present Second Appeal.

12. The two substantial questions of law which were raised and argued by the Counsel for the appellant are as hereunder:

(1) Whether the Will by an assignee in favour of his sister's son can be construed to be a testamentary disposition in favour of a stranger within the meaning of the Act?

(2) Whether the respondent/plaintiff is entitled to a decree on the ground that the mere revenue entries would constitute title in his favour?

13. The facts in nutshell had been dealt with supra. The appellant/1st defendant no doubt had raised a plea that during the lifetime of Narayanappa, he was living with him and he was looking after him and they constitute members of a composite family. The suit lands are self-acquisitions of D.Narayanappa who died on 13-3-1991 testate by executing a Will dated 23-1 -1985, marked as Ex.B-1. It is the specific case of the appellant that during the lifetime of late Narayanappa, the suit

property was being enjoyed jointly by them and they were raising different crops and were paying cist and the respondent/plaintiff or his father have nothing to do with the said properties and they never enjoyed the said properties. The 3rd defendant, during the pendency of A.S.No. 27/99 on the file of Senior Civil Judge, Hindupur died and no legal representatives were impleaded since the plaintiff alone is the legal heir of the 3rd defendant. As already referred to supra, the 3rd defendant is the brother of Narayanappa and the father of the respondent/plaintiff. The Court of first instance, on the strength of the Will executed by Narayanappa - Ex.B-1, ultimately had negated the relief to the respondent/plaintiff.

14. It is not in controversy between the parties that Condition No. 1 in D-Form Patta - Ex.A-3, granted in favour of Narayanappa specifies about heritability and non-alienability of the assigned land. No doubt, the evidentiary details had been pointed out by both the Counsel relating to the proof of the execution of Ex.B-1. Section 2(6) of the Act defining 'transfer' reads:

'transfer means sale, gift, exchange, mortgage with or without possession, lease or any other transaction with assigned lands, not being a testamentary disposition and includes a charge on such property of a contract relating a assigned lands in respect of such sale, gift, exchange, mortgage, lease or other transaction'

From this definition, it is clear that a testamentary disposition does not fall within meaning of 'transfer' under the Act. Hence, the right of the assignee-deceased Narayanappa in making testamentary disposition cannot be in any way doubted.

15. It is no doubt true that the respondent/plaintiff had not specifically pleaded about the family or the joint family as such, but the fact remains that the 3rd defendant is the brother and the respondent/ plaintiff is the brother's son belonging to the same family since Narayanappa died unmarried. It is also not in dispute that the appellant is the sister's son. Since a sister's son also is a blood relative, such a blood relative will not be a stranger and hence there could be testamentary disposition in favour of such a blood relative, is the stand taken by the learned Counsel for the appellant. Since the term 'family' is not defined under the Act, the definition of the same in Webster's Dictionary had been relied upon wherein on doubt it is stated that all persons in the family related by blood or marriage also

may fall within the meaning of 'family'. However, apart from the condition of non-alienability, there is a condition relating to the heritability also. The term or expression 'heritable' can be definitely construed as one in favour of the family members and all blood relatives cannot fall within the fold of the family members. In the decision referred (3) supra, it was held:

'The lands are assigned to the land less poor persons for their enjoyment, as also the enjoyment of their heirs. As such, the conditions that the assigned land is heritable but not alienable and that it should be in cultivation of the assignee and his family members, have to be read together and in this context, the definition of the word 'transfer' under Section 2(6) of the Act has to be tested including the exclusion of testamentary disposition from the said word 'transfer'. This exclusion of testamentary disposition from the word 'transfer' under Section 2(6) of the Act is not in genera sense and the testamentary disposition is not used or understood as in common parlance. It should be read down and understood in the context of the objects and intendment of the Act, which totally prohibits the induction of strangers to the family of assignee either during his lifetime or thereafter. As such, the words 'testamentary disposition' employed under Section 2(6) of the Act have to be understood that the assignee can execute a Will choosing some of his family members to succeed to the assigned lands excluding one or some among his family members. As such, the will even if it is a testamentary disposition can only be among the family members of the said assignee but not to a stranger. This is the proper construction to be given to beneficial legislation of this nature, as otherwise, it is capable of being abused and misused. If bequeathing of the assigned land to a stranger to a family is allowed, then under the guise of a will, the lands which are otherwise precluded from alienation or transfer can easily be transferred labeling it as a will and then the very purpose of the Act will be frustrated. While interpreting the beneficial statutes, one which furthers the object of Act should be adopted even by passing the common and general notions. As such, that the will, even though a testamentary disposition, is not permissible in the case of assigned land covered by A.P. Act No. 9 of 1977 in favour of strangers to the family . A will can be executed by the assignee under A.P act No. 9 of 1977 only in favour of his family member/s and not to strangers.'

Though testamentary disposition is permissible under the Act, inasmuch as Ex.B-1 was executed in favour of sister's son who is a stranger to the family, in my considered opinion, the appellate Court had arrived at the correct conclusion relating to the validity of Ex.B-1. It is no doubt true that the evidence of D.W.1 and D.W.2 had been let in to prove the execution of Ex.B-1. In the light of the view expressed by me, the other evidentiary details need not be discussed in this regard.

16. The next question which has been elaborately argued is that the mere entries in revenue records relied upon by the respondent/plaintiff would not constitute title. Reliance was placed on the divisions referred (1) and (2) supra. There cannot be any controversy about this proposition. Ex.B-8, notice given by the Mandal Revenue Officer subsequent to the suit, also had been explained by the appellate Court and clear findings had been recorded at para 15 in this regard. Apart from the evidence of P.W.1, the evidence of P.W.2 and P.W.3 and also the documentary evidence Exs.A-1 to A-5 is available on record. As already referred to supra, the subsequent events i.e., the death of the brother of Narayanappa, the 3rd defendant, during the pendency of the Appeal and the respondent/plaintiff alone being the sole heir of the deceased, also may have to be taken into consideration and in the light of the same, I have no hesitation in holding that the respondent/plaintiff alone is the family member of the deceased Narayanappa and in view of the clear condition in D-Form Patta, the execution of Ex. B-1 by the deceased Narayanappa is of no consequence and accordingly the respondent/plaintiff is bound to succeed. The appellate Court had recorded several other findings in detail which are all findings relating to the factual aspects. In the light of the object and also the provisions of the Act and also in the light of the condition in Ex.A-3, I have no hesitation in holding that the appellate Court is well justified in reversing the Judgment and decree of the Court of first instance.

17. Hence, I do not find any merit in the Second Appeal and accordingly the same shall stand dismissed, but in the facts and circumstances of the case, without costs.