



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

[3397]

MONDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

SECOND APPEAL NO: 817/2012

Between:

T.satyanarayana

...APPELLANT

AND

Turangi Somaraju Died and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.K L B KUMAR

Counsel for the Respondent(S):

1.NARASIMHA RAO GUDISEVA

2.0

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.817 of 2012

JUDGMENT:

This second appeal is filed aggrieved against the judgment and decree dated 22.03.2012, in A.S.No.47 of 2005, on the file of the III Additional District Judge, Kakinada, reversing the judgment and decree dated 17.02.2005 in O.S.No.171 of 1998, on the file of the Principal Senior Civil Judge, Kakinada.

2. The appellant herein is the defendant, and respondent Nos.1 to 7 are the plaintiffs in O.S.No.171 of 1998, on the file of the Principal Senior Civil Judge, Kakinada. During the pendency of the first appeal proceedings before the First Appellate Court, respondent No.1 herein/plaintiff No.1 died and respondent No.8, who is the 2nd wife of plaintiff No.1, was added as the legal representative of deceased plaintiff No.1. As plaintiff No.1 got another daughter, i.e., respondent No.9 herein, she was also brought on record as the legal representative of deceased plaintiff No.1.

3. The plaintiffs initiated action in O.S.No.171 of 1998, on the file of the Principal Senior Civil Judge, Kakinada, with a prayer for partition of the suit schedule properties viz. 'A and B' schedule properties against the defendant into 8 equal shares with good and bad qualities by metes and bounds and allot 7 such shares, i.e., each one such share to each plaintiff, and pass a final decree in terms of the preliminary decree and put the plaintiffs in separate possession from the joint possession and enjoyment and for costs.

4. The learned Principal Senior Civil Judge, Kakinada, after conclusion of trial, dismissed the suit. Felt aggrieved of the same, the unsuccessful plaintiffs in the above said suit filed the appeal in A.S.No.47 of 2005, before the III Additional District Judge, Kakinada. The learned III Additional District Judge, Kakinada, allowed the first appeal by reversing the judgment and decree passed by the trial Court. Aggrieved thereby, the unsuccessful defendant approached this Court by way of second appeal.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the original suit.

6. The case of the plaintiffs, in brief, as set out in the plaint averments in O.S.171 of 1998, is as follows:

The plaintiff Nos.1 to 7 filed the suit against the sole defendant for partition of plaint 'A' schedule property, which is a vacant site in an extent of 780 Sq.yards, and plaint 'B' schedule property, which is a house bearing D.No.69-6-125 and the site in an extent of 300 Sq.yards situated in Gaigolupadu Village, Ramanayyapeta of Kakinada Rural Mandal, into 8 equal shares and for allotment of one such share to each of them contending that the said properties are ancestral properties, that there was no partition and that plaintiff Nos.2 to 7, being the daughters of plaintiff No.1 through his 2nd wife, and the defendant, who is the son of plaintiff No.1 through his 1st wife, are entitled to the said properties. The plaintiffs pleaded that there were disputes between the defendant and one Bonthu Suryanarayana and in that respect, there is a case pending before the II Class Magistrate Court, Kakinada, and the

defendant, who is none other than the son of plaintiff No.1, made him believe that some papers containing his signatures are to be filed into Court and obtained his left hand thumb impressions and subsequently, he came to know that the defendant obtained a relinquishment deed from him with regard to plaint 'A' schedule property by cheating him and by playing fraud and misguiding him. Therefore, plaintiff No.1 cancelled the said relinquishment deed by executing a registered cancellation deed mentioning the true facts. The plaintiffs further pleaded that in spite of the notice dated 27.04.2008 demanding partition of the properties got issued by the plaintiffs, the defendant, having received the same, kept quiet without issuing any reply and also without co-operating for partition. Hence, the plaintiffs are constrained to file the present suit.

7. The defendant filed written statement and the brief averments in the written statement filed by the defendant are as follows:

The defendant pleaded that plaintiff Nos.2 to 7 are the daughters of Smt.Raghava and plaintiff No.1 did not marry the said Raghava and plaintiff Nos.2 to 7 were not born to her through plaintiff No.1. The defendant further pleaded that plaintiff No.1 kept the said Raghava as his concubine and as such plaintiff No.1 has been looking after plaintiff Nos.2 to 7 and the plaint 'A' schedule property is the joint family property of plaintiff No.1 and the defendant and plaintiff Nos.2 to 7 have no right whatsoever in the property. The defendant further pleaded that at the instance of one M.Bhadra Rao and one Rambabu, plaintiff No.1 executed a cancellation deed dated 04.04.1998 with false

allegations and since 16.03.1998, the defendant alone has been in possession and enjoyment of the plaint 'A' schedule property and the plaintiffs have no right whatsoever therein and further the plaint 'B' schedule property is the ancestral property of plaintiff No.1 and the defendant and the other plaintiffs have no right in the said property and as such, he prayed for dismissal of the suit with costs.

8. On the basis of above pleadings, the learned Principal Senior Civil Judge, Kakinada, framed the following issues for trial:

- 1) Whether the plaintiffs 2 to 7 are legitimate children of the 1st plaintiff?
- 2) Whether registered cancellation deed dated 04.04.1998 is valid?
- 3) Whether the plaintiffs are entitled to the relief of partition as prayed for?
and
- 4) To what relief?

9. During the course of trial before the trial Court, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A-1 to A-4 were marked. On behalf of the defendant, D.W.1 was examined and no document was marked.

10. The learned Principal Senior Civil Judge, Kakinada, after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, dismissed the suit. Felt aggrieved thereby, the unsuccessful plaintiffs in the aforesaid suit filed the appeal suit in A.S.No.47 of 2005, on the file of the III Additional District Judge, Kakinada, wherein the following points came up for consideration:

- 1) Whether the plaintiff 2 to 7/appellants 2 to 7 are the legitimate children of the 1st plaintiff/1st appellant?
- 2) Whether the plaintiffs/appellants are entitled to seek for partition of the plaint schedule properties without seeking for cancellation of the relinquishment deed dated 16.03.1998?
- 3) Whether the plaintiffs/appellants are entitled for partition of the plaint 'A' and 'B' schedule properties as prayed for?
- 4) Whether the impugned decree and judgment are liable to be set aside?
and
- 5) To what relief?

11. The learned III Additional District Judge, Kakinada, i.e., the first appellate Judge, after hearing the arguments, answered the points, as above, against the defendant and allowed the appeal suit filed by the plaintiffs. Felt aggrieved of the same, the defendant in O.S.171 of 1998 filed the present second appeal before this Court.

12. Heard Sri K.L.B.Kumar, learned counsel for the appellant, and Sri Narasimha Rao Gudiseva, learned counsel respondents.

13. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. It is regulated in accordance with law. A second appeal preferred under Section 100 of C.P.C., could be admitted only when the appellant satisfies the Court that substantial question of law between the parties arise in the case. A proper test for determining whether a question of law raised in the case is substantial would be or whether it directly and

substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by the superior Courts or is not free from difficulty or cause for discussion of alternative views. In a case of **Boodireddy Chandraiah v. Arigela Laxmi**¹, the Apex Court held that it is not within the domain of High Court to investigate grounds on which the findings were arrived at by the last Court of fact namely, the first appellate Court. In a case where from a given set of circumstances two inferences of facts are possible, one drawn by the lower appellate Court will not be interfered by the High Court in a second appeal. Adopting any other approach is not permissible. Where, the facts required for a point of law have not been pleaded, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. Mere appreciation of facts, documentary evidence and contents of documents cannot be held to be raising a substantial question of law.

14. The defendant having chosen to invoke the jurisdiction of this Court under Section 100 of Civil Procedure Code, it is for him to meet the above principles and satisfy the Court whether there exists any substantial question of law.

15. The contention of appellant is that the judgment and decree of the First Appellate Court is contrary to law and that the second appeal may be allowed by setting aside the judgment and decree passed by the First Appellate Court.

16. The learned counsel for appellant would contend that mother of plaintiff Nos.2 to 7 is not the wife of plaintiff No.1 and the plaintiff No.1 was not the

¹ (2007) 8 SCC 155

father of plaintiff Nos.2 to 7 and that plaintiff Nos.2 to 7 are not entitled to any share in the plaint schedule property. The learned counsel for respondent/plaintiff contends that the defendant is the son of plaintiff No.1, born to his 1st wife and the 1st wife of plaintiff No.1 died when the defendant was at the age of 7 or 8 years, and later plaintiff No.1 married one Raghava and plaintiff Nos.2 to 7 were born to the said Raghava through plaintiff No.1. As could be seen from the material on record, in the plaint itself the plaintiff specifically pleaded that plaintiff Nos.2 to 7 are his daughters born through his 2nd wife Raghava. In the plaint, in paragraph No.3, the plaintiff specifically pleaded that plaintiff Nos.2 to 7 are his daughters and the defendant is his son and plaintiff Nos.2 to 7 were born through the 2nd wife of plaintiff No.1, whereas the defendant is the son born through the 1st wife of plaintiff No.1.

17. The plaintiffs relied on Ex.A-1, the copy of the legal notice said to have been issued by the plaintiffs through their counsel to the defendant. Ex.A-1 reveals that prior to filing of the suit the plaintiffs got issued a legal notice dated 27.04.1998 under Ex.A-1, wherein it is specifically pleaded that plaintiff Nos.2 to 7 are the daughters of the plaintiff No.1 born through the 2nd wife and the defendant is the only son born through his 1st wife and plaintiff No.1 reiterated in Ex.A-1 that after the death of his 1st wife, while the defendant was aged about 7 or 8 years, he married one Raghava as his 2nd wife and through Raghava he gave birth to six (06) daughters viz. plaintiff Nos.2 to 7 respectively. Ex.A-2 reveals that the defendant received the said notice and the defendant also admits his signature on Ex.A-2 postal acknowledgment card. It

is an admitted fact that no reply notice was given by the defendant to Ex.A-1 legal notice issued by the plaintiff. The defendant, who received such notice before filing of the suit, did not even choose to send a reply denying the paternity of plaintiff Nos.2 to 7 and the marriage of Raghava with plaintiff No.1. The defendant has not explained the reasons for not responding to Ex.A-1 legal notice. The appellant simply contended that he did not receive any notice. The fact remains that the plaintiff got issued Ex.A-1 legal notice and the defendant acknowledged the same under Ex.A-2. The defendant admitted that the signature on Ex.A-2 postal acknowledgment card belongs to him. This circumstance goes a long way in showing that the defendant came up with a belated and false theory both about the paternity of plaintiff Nos.2 to 7 and the status of Raghava with plaintiff No.1.

18. The defendant contended in the written statement itself that plaintiff Nos.2 to 7 are daughters of Raghava and plaintiff No.1 has kept Raghava as his concubine. But during the evidence, in cross-examination, the defendant did not even identify the said Raghava who was present in the court hall, for the reasons best known to him. This circumstance goes a long way in showing that the defendant came up with a false and belated theory. The defendant admits that his natural mother died while he was aged about 8 years and now his age is 42 years. The specific contention of the plaintiff No.1 is that after the death of his 1st wife, he married Raghava as his 2nd wife and he gave birth to six (06) daughters through Raghava. P.W.1 narrated in the evidence that after the demise of his 1st wife, he married Raghava and the said Raghava gave birth to

six (06) daughters through him, i.e., plaintiff Nos.2 to 7. P.W.2 also asserted about the marriage of the said Raghava with plaintiff No.1. In the cross-examination of P.W.1, it was elicited by the learned counsel for the defendant that the defendant is his son through his 1st wife. P.W.1 also asserted in his evidence that after the death of his 1st wife he married Raghava. It is not the case of the defendant either in the pleadings or in the evidence that the said Raghava was already married to another person and through him/1st husband, plaintiff Nos.2 to 7 were born to her. P.W.1 specifically pleaded in the plaint as well as in the evidence that he married Raghava after the death of his 1st wife and plaintiff Nos.2 to 7 were born to him through his 2nd wife Raghava, by that time the defendant was aged about 8 years. The father himself is admitting the paternity of plaintiff Nos.2 to 7 in the plaint as well as in his evidence. For the aforesaid reasons, this Court is of the considered view that plaintiff Nos.2 to 7 are born to Raghava through plaintiff No.1 and after the death of his 1st wife, plaintiff No.1 married the said Raghava and through Raghava he gave birth to plaintiff Nos.2 to 7.

19. The plaintiffs are seeking relief of partition of the plaint schedule property. In the evidence itself, the defendant admits that both the properties were purchased by his grandfather during his lifetime and he is no more. It is not the case of either of the parties that the father of plaintiff No.1 died intestate.

20. The learned counsel for the appellant placed a case law in **Balakrishnan and others Vs. Selvi and others** vide **S.A.No.725 of 2001**, wherein the High Court of Madras held as follows:

“In any event, on the date of filing of the suit when the father is alive, the right of illegitimate children seeking right over the fathers property or any other persons property through her father is pre-mature. There is a difference in law between right of legitimate and illegitimate children. That the difference is well spoken and pointed out in Section 16(3) of the Hindu Marriage Act, 1955.”

In the present case, the scheduled property belongs to the father of plaintiff No.1 and it was purchased by the father of plaintiff No.1, i.e., the grandfather of plaintiff Nos.2 to 7 and the defendant, and he died. Therefore, plaintiff Nos.2 to 7 and the defendant are entitled to one share on par with their father/plaintiff No.1 in the ancestral property since it is not the self-acquired property of the father of plaintiff Nos.2 to 7 and defendant.

21. The learned counsel for the appellant also placed another case law in ***Vasant Ramchandra Alias Chander Vs. Gurudas Vasantrao Yelvande and others*** vide ***Civil Revision Application No.861 of 2014***, wherein the High Court of Bombay held as follows:

“The children of a void marriage, though are regarded as legitimate, such children would not be entitled to any share in the properties, which are the ancestral co-parcenary joint family properties of their father. Their right to claim share remains limited only to the extent of the separate property of their father, but, in that property, they cannot make any claim to it during the lifetime of their father. Their rights in the separate properties of their father will accrue only on the death of the father and that too, by way of succession.

In the present case, plaintiff Nos.2 to 7 are not the illegitimate children of plaintiff No.1. The father/plaintiff No.1 himself asserted in the plaint and also in the evidence that plaintiff Nos.2 to 7 are his children, born through his 2nd wife, and after the death of his 1st wife he married Raghava as his 2nd wife. No

evidence was produced by the appellant to show that plaintiff Nos.2 to 7 are illegitimate children of plaintiff No.1.

22. The learned counsel for the appellant placed a case law of the Hon'ble Apex Court in **Anil Rishi Vs. Gurbaksh Singh**². The ratio laid down in the aforesaid case law is applicable to the suits filed for declaration of title and recovery of possession of the plaint schedule property.

23. The learned counsel for the appellant placed a case law in **Rathnamma & Ors. Vs. Sujathamma and Ors.**³, wherein the Hon'ble Apex Court held as follows:

"The burden to prove marriage was on the Plaintiff alone. The defendants have denied marriage of the Plaintiff, therefore, the burden to prove marriage was on the plaintiff alone. Apart from such fact, the marriage cannot be said to be taken place in terms of Section 5(v) of the Act which is to the effect that the parties are not sapindas to each other, unless the custom or usage governing each of them permits of a marriage between the two."

In the aforesaid case law, the plaintiff No.1 has pleaded about his 2nd marriage in the plaint itself. In the present case, the plaintiffs pleaded in the plaint itself about the paternity of plaintiff Nos.2 to 7. In the plaint and in the evidence, plaintiff No.1/P.W.1 asserted that at the age of 8 years of the defendant, his 1st wife died and he married one Raghava as his 2nd wife and he gave birth to plaintiff Nos.2 to 7 through Raghava. Moreover, P.W.2 also asserted about the marriage of plaintiff No.1 with Raghava and also the birth of plaintiff Nos.2 to 7 to Raghava through plaintiff No.1.

² 2006 (5) SCC 558

³ (2019) 19 SCC 714

24. The learned counsel for the appellant placed a case law in **Ram @ Ramdas Sheshrao Neharkar Vs. Sheshrao Babura Neharkar and others**⁴.

The facts in the aforesaid case law are that the factum of marriage of the mother of the appellant with respondent No.1 was not considered by the trial Court as well as the First Appellate Court and there is a large scale of discrepancies in the evidence led by the plaintiff. Whereas in the present case, the marriage of plaintiff No.1 with Raghava after the death of the 1st wife of plaintiff No.1 is pleaded in the plaint itself and also narrated in the evidence itself by P.W.1, which is well supported by P.W.2. Furthermore, to disprove the evidence produced by the plaintiff, no evidence was produced by the defendant to show that plaintiff Nos.2 to 7 are illegitimate children of plaintiff No.1.

25. The learned counsel for the appellant placed a case law of the High Court of Madras in **Latif Estate Line India Ltd. Vs. Hadeeja Ammal**.

The ratio laid down in the said case law relates to cancellation of a sale deed. In the present case, the relief of cancellation of the relinquishment deed is not sought by the plaintiff and the said relinquishment deed is not even produced by the defendant. Further, plaintiff No.1, who is alleged to have relinquished his right in the properties himself, is not admitting the contents of the relinquishment deed. He himself pleaded that he has not received any amount as mentioned in the relinquishment deed and the defendant obtained the relinquishment deed fraudulently from him. Therefore, it is for the defendant to prove the alleged recitals in the alleged relinquishment deed. The alleged

⁴ 2024 INSC Page 498

relinquishment deed is not even produced by the appellant and the recitals in the relinquishment deed are not proved by the appellant.

26. The learned counsel for appellant would contend that in view of the relinquishment deed executed by plaintiff No.1, the plaintiffs are not entitled to seek the relief of partition of the plaint schedule property. The appellant admitted that both the suit schedule properties were purchased by his grandfather during his lifetime and he is no more and he died intestate, therefore, the plaint schedule properties are ancestral properties of the plaintiffs and the defendant. The specific case of the appellant is that plaintiff No.1 executed a relinquishment deed dated 16.03.1998 in favour of the defendant after receiving an amount of Rs.80,000/- towards consideration. The contention of plaintiff No.1 is that he has not received any amount as mentioned in the alleged relinquishment deed and the said relinquishment deed was obtained fraudulently by the defendant by obtaining his signatures on a paper. Therefore, the burden is on the appellant to prove the same. Admittedly, the said relinquishment deed was not even produced at all by the appellant before the trial Court. As noticed supra, the plaint schedule properties are ancestral properties of both the parties to the suit. Therefore, plaintiff Nos.2 to 7, who are the children of Raghava and plaintiff No.1, are having equal shares along with plaintiff No.1 and defendant in the plaint schedule property. Even if it is assumed that the relinquishment deed is true, plaintiff No.1 can relinquish only his undivided share in the schedule property. Moreover, the said relinquishment deed was not produced by the appellant before the trial Court.

27. The learned counsel for the appellant placed a case law of the Hon'ble Apex Court in ***Suhrid Singh @ Sardool Singh Vs. Randir Singh & Ors***⁵.

In the case at hand, the alleged relinquishment deed is not even produced and also not marked as an exhibit. The recitals in the relinquishment deed are disputed by the appellant from the beginning itself and he pleaded in the plaint itself that by playing fraud, the defendant obtained a relinquishment deed and the defendant did not pay any consideration of Rs.80,000/- as mentioned in the alleged relinquishment deed. The ratio laid down in the aforesaid case law is that "*the sale deed cannot be cancelled except by the order of a competent court*". Here, in the present case, the plaintiff has not sought any relief of cancellation of the relinquishment deed and the very basis of execution of the relinquishment deed itself is disputed by the appellant itself.

28. The learned counsel for the appellant placed case laws in ***Thota Ganga Lakshmi & Another Vs. Government of Andhra Pradesh & Others***⁶, ***Ananthula Sudhakar Vs. P.Buchi Reddy (Dead) by Learned Counsel for the respondent submits that. & Ors.***⁷ and ***Asset Reconstruction Company (India) Limited Vs. S.P. Velayutham & Ors.***⁸.

In the present case, the appellant pleaded that in view of the relinquishment deed executed by his father, after receiving an amount of Rs.80,000/-, the plaintiffs are not entitled to any share in the plaint schedule

⁵ AIR 2010 SUPREME COURT Page 2807

⁶ (2010) 15 SCC Page 207

⁷ (2008) 4 SCC Page 594

⁸ 2022 Supreme SC 397

property. Plaintiff No.1 disputed the contents of the said alleged relinquishment deed. Plaintiff No.1 contended that he has not received any consideration of Rs.80,000/- as mentioned in the relinquishment deed and the said relinquishment deed was obtained by the defendant fraudulently and by way of undue influence. Therefore, the burden is on the defendant to prove that, after receiving an amount of Rs.80,000/-, plaintiff No.1 relinquished his right in the plaint schedule properties. Moreover, the said relinquishment deed was not at all produced by the defendant and the defendant did not even exhibit the said relinquishment deed before the trial Court. As noticed supra, plaintiff No.1 is having an undivided share of $1/8^{\text{th}}$ share in the plaint schedule properties and even if it is assumed that the said relinquishment deed is proved, he can relinquish only his undivided share only in the plaint schedule property. Moreover, the disputed relinquishment deed was not produced at all by the appellant before the trial Court. For the aforesaid reasons, plaintiff Nos.2 to 7, the defendant and respondent No.2 in the appeal proceedings, who is none other than the daughter of plaintiff No.1 born through his 1st wife, are entitled to equal shares in the plaint schedule property.

29. The learned counsel for appellant would contend that grant of preliminary decree to respondent No.8, who came on record as a legatee under the registered Will dated 18.03.2008, alleged to have been executed by deceased plaintiff No.1, cannot be sustained without proving the Will as per Section 67 of the Indian Evidence Act. Originally, plaintiff Nos.1 to 7 filed a suit for seeking the relief of partition of plaint schedule properties into eight (08) equal shares

and to allot one such share each to plaintiff Nos.1 to 7 and to the defendant. The trial court, after completion of trial, dismissed the said suit. Aggrieved by the said decree and judgment, the plaintiffs in the said suit filed the first appeal. The first appeal is a continuation of suit proceedings. During the pendency of the first appeal, plaintiff No.1 died and respondent No.8, i.e., the 2nd wife of plaintiff No.1, came on record by producing the original registered Will executed by respondent No.1 in favour of the respondent No.8 before the First Appellate Court and on hearing both sides, the said I.A.No.2033 of 2011 was allowed by the First Appellate Court vide its order dated 30.09.2011. Consequently, respondent No.8 has come on record in the place of respondent No.1. The appellant has not challenged the said orders passed in I.A.No.2033 of 2011 of the First Appellate Court. Having accepted the said finding of the First Appellate Court, now during the pendency of the second appeal, at the stage of arguments, the oral contentions of the appellant that without proving the Will as per Section 67 of the Indian Evidence Act, respondent No.8 came on record and that she is not entitled to any share cannot be taken into consideration. In the grounds of appeal, it was not pleaded by the appellant that without proving the Will, respondent No.8/2nd wife of plaintiff came on record and that she is not entitled to any share in the plaint schedule property. The First Appellate Court, by giving reasons, allotted the share of respondent No.1 to respondent No.8, who being the 2nd wife of respondent No.1.

30. The finding of fact recorded by the First Appellate Court were based on proper appreciation of evidence and the material on record and there was

neither illegality nor irregularity in those findings and therefore, the findings do not require to be upset. Further, the existence of a substantial question of law is a sine qua non for the exercise of jurisdiction by this Court as per Section 100 of Code of Civil Procedure. The questions raised, strictly speaking, are not even pure questions of law, let alone substantial questions of law.

31. In the result, the second appeal is **dismissed** at the stage of admission, confirming the judgment and decree of the First Appellate Court.

Pending applications, if any, shall stand closed. No costs.

V. GOPALA KRISHNA RAO, J.

Date: 15.06.2026

SRT