



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

[3397]

MONDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

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

SECOND APPEAL NO: 1326/2012

Between:

A.g.ramalaskhmama and Others

...APPELLANT(S)

AND

Gattu Lakshamma and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.V B SUBRAHMANYAM

Counsel for the Respondent(S):

1.MAHADEVA KANTHRIGALA

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.1326 of 2012

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure is filed aggrieved against the judgment and decree, dated 30.03.2012, in A.S.No.89 of 2007, on the file of the VII Additional District Judge Court, Madanapalle, modifying the judgment and decree, dated 04.06.2007, in O.S.No.105 of 1995, on the file of the Senior Civil Judge Court, Madanapalle.

2. The plaintiffs initiated action in O.S.No.105 of 1995, on the file of the Senior Civil Judge Court, Madanapalle, with a prayer for declaration of the plaintiff's right and title for the properties covered by the sale deeds dated 17.08.1963 and 24.07.1966, in respect of Door Nos.8/1, 8/2 and 8/3 or in the alternative order for partition of plaintiff's half share in the suit schedule properties and to put him in separate possession of the same after division by metes and bounds and to allow the premises in Door Nos.8/1, 8/2 and 8/3 by working out equities.

3. The learned Senior Civil Judge, Madanapalle, decreed the suit with costs. Felt aggrieved of the same, the unsuccessful defendant Nos.1, 3, 5 and 6 in the above said suit filed the aforesaid appeal before the first appellate Court. The learned VII Additional District Judge, Madanapalle, dismissed the appeal by modifying the judgment and decree passed by the learned trial

Judge. Aggrieved thereby, the defendant Nos.1, 3, 5 and 6 approached this Court by way of second appeal.

4. The appellant Nos.1 to 4 herein are the defendant Nos.1, 3, 5 and 6 and during the pendency of the second appeal, the appellant No.3 died and the appellant Nos.5 and 6 are brought on record as the legal representatives of the deceased appellant No.3.

The respondent No.1 herein is the plaintiff No.2 and during the pendency of the second appeal, the respondent No.1 died and the respondent No.2 herein, who is the plaintiff No.3 is brought on record as the legal representative of the deceased respondent No.1.

As per the order dated 06.04.2017, the Composite High Court of Andhra Pradesh, at Hyderabad, dismissed the second appeal against the respondent No.3 for default and the respondent No.4 herein is the defendant No.4 in O.S.No.105 of 1995.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the suit O.S.No.105 of 1995, before the trial Court.

6. The case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.105 of 1995, is as follows:

The plaint schedule comprises the house property bearing Door Nos.8/1, 8/2, 8/3 and 8/29, situated at Ranga Reddy Street, Madanapalle and

the original plaintiff No.1 pleaded that the suit property originally belonged to one Akuthota Ganganna, who died prior to 1947 leaving behind him, his 3rd wife Akuthota Lakshamma and his adopted son A.G. Krishna Murthy, and after the demise of Akuthota Ganganna, they succeeded to his properties and they filed a suit in O.S.No.72 of 1950, on the file of the Subordinate Judge's Court, Chittoor, for recovery of possession and for damages against his 1st wife by name Akuthota Lakshamma and others, and the same was decreed on 08.11.1951. The plaintiff No.1 pleaded that the title of A.G. Krishna Murthy in the suit properties was upheld and the 3rd wife of Akuthota Ganganna had no right in the suit properties as per the provisions of the Hindu Law. The plaintiff No.1 further pleaded that A.G. Krishna Murthy borrowed a sum of Rs.1,000/- on 01.11.1962, from the original plaintiff for his legal and justifiable causes and executed a registered mortgage deed in his favour by creating a charge over his house properties bearing door numbers 8/1, 8/2 and 8/3 and A.G. Krishna Murthy also borrowed another sum of Rs.2,300/- from the original plaintiff for his family necessities and executed a simple mortgage deed in his favour by creating a charge over his house property bearing D.No.8/2 and that A.G. Krishna Murthy offered to sell his properties to the original plaintiff.

The plaintiff No.1 further pleaded that on 17.08.1963, A.G. Krishna Murthy sold the house properties bearing D.Nos.8/1 and 8/3 to the original plaintiff and again on 24.07.1966, he sold the remaining house portion bearing D.No.8/2 to the original plaintiff under a registered sale deed. The plaintiff

No.1 further pleaded that he sent a legal notice dated 16.12.1980 to A.G. Krishna Murthy to vacate the premises and to pay rents for which he did not comply and that the plaintiff was constrained to file eviction petitions in R.C.C.Nos.1/1981, 2/1981 and 3/1981 in respect of the houses bearing door numbers 8/1, 8/2 and 8/3 on the file of the Rent Controller, Madanapalle, against A.G. Krishna Murthy and sub-tenants and the Rent Controller, Madanapalle, directed the original plaintiff to approach a civil court of competent jurisdiction. As such, the plaintiffs are constrained to file the present suit.

7. The case of the defendant Nos.1, 3, 5 and 6 as per the written statement is as follows:

The defendant No.1 is the mother of the defendant Nos.2 to 6 and wife of A.G. Krishna Murthy, who are the parties to the suit in O.S.No.105 of 1995. The defendants pleaded that the defendant No.1 being a widow and the defendant No.6 being an unmarried daughter of A.G. Krishna Murthy have been living in the suit premises taking care of the wife of the defendant No.5 and her child. The defendants pleaded that the suit properties originally belonged to Akuthota Lakshamma and the same was devolved upon the defendant Nos.3 and 5, basing on the registered Will dated 30.09.1978, and that no adoption had taken place. The defendants pleaded that the adoption pleaded by the plaintiffs is totally void and A.G. Krishna Murthy was not the adopted son and the question of enjoyment of his half share in the suit properties did not arise and the defendant Nos.1 to 6 or Akuthota

Lakshamma had not derived any benefit out of the alleged transactions dated 01.11.1962, 17.08.1963, 25.04.1964 and 24.07.1966, and they are void transactions in the eye of law and the plaint schedule property would be valued at more than Rs.3,00,000/- on the date of the suit and the original plaintiff being a stranger to the family of the defendant Nos.1 to 6 has no right to claim the joint possession along with the family members and as such, they prayed for dismissal of the suit with exemplary costs.

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

- 1) Whether the adoption of A.G.Krishna Moorthy by Ganganna is true and valid? and whether the said A.G.Krishnamurthy succeeded to the properties of late Ganganna?
- 2) Whether Akuthota Lakshamma got the house bearing Door No.8/29 situate at Chokala Veedhi and whether the house portion bearing Door Nos.8/1, 8/2 and 8/3 were got by late A.G.Krishna Murthy?
- 3) Whether the sale of house bearing Door Nos.8/1 and 8/3 under the registered sale deed dated 17.08.1963 in favour of the plaintiff is true, valid and binds the defendants?
- 4) Whether the sale deed dated 24.07.1966 concerning the house bearing door No.8/2 in favour of the plaintiff by late A.G.Krishna Murthy is true, valid and binding on the defendants?

- 5) Whether late A.G.Krishna Murthy became tenant of the plaintiff at Rs.70/- per month of premises bearing door No.8/2 and at Rs.40/- concerning the premises bearing Door No.8/1 and 8/3 of plaintiff?
 - 6) Whether the Will dated 30.09.1978 said to have executed by Akuthota Lakshamma in favour of the defendant Nos.3 and 5 is true, valid and binding on the plaintiff?
 - 7) Whether the transactions covered by deeds dated 01.11.1962, 17.08.1963, 25.04.1964 and 24.07.1966 were for the benefit of family of the defendant Nos.1 to 6?
 - 8) Whether the court fee paid is correct?
 - 9) Whether the plaintiff is entitled to declaration of his title over the suit properties?
 - 10) Whether the plaintiffs are entitled to alternative relief of partition to half share in the suit properties in case the relief for declaration of title is negative?
 - 11) Whether the plaintiff is entitled to the past profits and also to future profits as prayed for? and
 - 12) To what relief?
9. During the course of trial in the trial Court, on behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A-1 to A-12 were marked. On behalf of the defendants, D.W.1 was examined and Ex.C-1 and Exs.B-1 to B-36 were marked.

10. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, decreed the suit by granting relief of declaration of title and possession with costs. Felt aggrieved thereby, the unsuccessful defendant Nos.1, 3, 5 and 6 filed the appeal suit in A.S.No.89 of 2007, wherein the following points came up for consideration:

- 1) Whether the original plaintiff is entitled for declaration of his title over the suit properties; If he is not entitled such a relief, whether the plaintiffs are entitled for the alternative relief of partition to the extent of half share in the suit limitation?
- 2) Whether the suit is barred by limitation?
- 3) Whether the judgment and decree passed by the lower court are sustainable under the law? and
- 4) To what relief?

11. The learned first appellate Judge after hearing the arguments, answered the points, as above, against the defendant Nos.1, 3, 5 and 6, and dismissed the appeal by modifying the judgment and decree passed by the learned trial Judge as by granting relief of partition of the plaint schedule properties. Felt aggrieved of the same, the unsuccessful defendant Nos.1, 3, 5 and 6 in O.S.No.105 of 1995 filed the present second appeal before this Court.

12. On hearing learned counsel for the appellants at the time of admission of the second appeal on 27.12.2013, the Composite High Court of Andhra Pradesh, at Hyderabad, admitted the second appeal and framed the following substantial questions of law:

- 1) Whether the Courts below are justified in treating A.G.Krishna Murthy as adopted son of Akuthota Ganganna and his 3rd wife A.Lakshamma, without deciding the question of adoption when the contested defendants seriously and strenuously contending that there is no such adoption at any point of time? and
- 2) Whether both the courts below considered the evidence adduced by the parties both oral and documentary evidence in perspective and whether both the findings of the court below are perverse?

13. Heard Sri Shravan, learned counsel, representing Sri V.B.Subrahmanayam, learned counsel for the appellants/defendant Nos.1, 3, 5 and 6 and Sri Mahadeva Kanthirigala, learned counsel for the respondents/plaintiffs.

14. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is final Court of facts, except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of ***Bhagwan Sharma v. Bani Ghosh***¹, the Apex Court held as follows:

“The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature.”

In the case of ***Kondira Dagadu Kadam v. Savitribai Sopan Gujar***², the Apex Court held as follows:

“The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

15. The undisputed facts are that originally, the suit schedule property belonged to one Akuthota Ganganna and he was in possession and enjoyment of the same. The plaintiff No.1 filed the suit for the relief of declaration of title of the house property bearing Door Nos.8/1, 8/2 and 8/3 or alternatively to grant the relief of partition of half share of the suit schedule property got from his vendor. The trial Court, after a full-fledged trial decreed the suit by declaring the title of the plaintiffs over the house property bearing Door Nos.8/1, 8/2 and 8/3 of the plaint schedule property. Aggrieved by the said decree and judgment passed by the trial Court, the defendant Nos.1, 3, 5 and 6 filed the first appeal and the First Appellate Court modified the decree and judgment passed by the trial Court as the plaintiff is entitled to half share from out of the house property bearing Door Nos.8/1, 8/2 and 8/3 and the

¹ AIR 1993 SC 398

² AIR 1999 SC 471

relief of declaration of title for the total plaint schedule property is modified by the First Appellate Court. Aggrieved by the same, the appellants in the first appeal filed the present second appeal and no cross-appeal was filed by the plaintiffs for seeking the relief of declaration of title against the decree and judgment passed by the First Appellate Court.

16. As stated supra, originally the plaint schedule house property bearing Door Nos.8/1, 8/2 and 8/3 in the plaint schedule belonged to one Akuthota Ganganna and the same is undisputed by both the parties. The case of the plaintiffs is that the said Ganganna died prior to 1947, leaving behind his 3rd wife Akuthota Lakshamma and the adopted son by name A.G. Krishna Murthy as his son. It was pleaded by the defendants that the said A.G. Krishna Murthy is not the son of Ganganna. The certified copy of the judgment in O.S.No.72 of 1950, on the file of the Subordinate Judge's Court, Chittoor, shows that the said A.G. Krishna Murthy is the adopted son of Ganganna and Akuthota Lakshamma together filed the suit in O.S.No.72 of 1950 against the tenants and the defendant No.5 therein in the said suit, who claims to be the widow of Ganganna, for recovery of possession of the plaint schedule properties. The said suit was decreed on contest by both the parties and no appeal was filed against the said decree and judgment passed in O.S.No.72 of 1950, and it reached finality.

17. Learned counsel for the appellants would contend that both the Courts below came to a wrong conclusion that A.G. Krishna Murthy is the adopted

son of Akuthota Ganganna and his 3rd wife Lakshamma, without discussing the question of adoption and that the said finding is a perverse finding.

18. Ex.A-1 is the decree passed in O.S.No.72 of 1950, on the file of the Subordinate Judge's Court, Chittoor, dated 08.11.1951. Both the parties are not disputing the said decree and judgment. No appeal was filed against the said decree and judgment in O.S.No.72 of 1950 and it reached finality. The defendant Nos.1, 3, 5 and 6 alone filed the first appeal as well as the second appeal. The defendant Nos.1 and 2 contended that they are unnecessarily added as parties to the suit and the defendant Nos.3 and 5 are having absolute rights under Ex.B-12 registered Will dated 30.09.1978, said to have been executed by Akuthota Lakshamma; later, she died on 22.09.1984. The said Lakshamma never disputed the alleged adoption of A.G. Krishna Murthy as a lifetime. In fact, the certified copy of the judgment in O.S.No.72 of 1950 goes to show that A.G. Krishna Murthy as a adopted son of Akuthota Ganganna and Lakshamma, being the 3rd wife of Ganganna, together jointly filed a suit in O.S.No.72 of 1950 seeking possession of the property against the alleged 1st wife of Ganganna and tenants and the said suit was decreed on contest by both the parties declaring that A.G. Krishna Murthy and Lakshamma are together entitled to possession of the entire suit schedule property. As stated supra, the appellant Nos.1 and 3 contended that they are unnecessarily added as parties to the suit and the appellant Nos.2 and 4 i.e., the defendant Nos.3 and 5 are claiming through Lakshamma under a registered Will, therefore, now the legatees under the Will cannot contend that

A.G. Krishna Murthy is not the adopted son of Ganganna, since the testatrix has not disputed the alleged adoption of A.G. Krishna Murthy. The First Appellate Court rightly held in its judgment by narrating the reasons that even if it is assumed that the alleged adoption is void, the said A.G. Krishna Murthy and the testatrix have equal rights in the plaint schedule property.

19. The defendant Nos.3 and 5 are claiming absolute title by virtue of a registered Will dated 30.09.1978, and the said registered Will is not disputed. The decree in O.S.No.72 of 1950 was also referred to by the testatrix in the Will dated 30.09.1978. The testatrix was not having absolute rights in the plaint schedule property and she was having half share in the plaint schedule house property. Therefore, at best, she could execute a Will in respect of her half share alone in the plaint schedule house property bearing Door Nos.8/1, 8/2 and 8/3. The plaintiff No.1 is claiming rights under Ex.A-5 registered sale deed dated 25.04.1966. The vendor of plaintiff No.1 by name A.G. Krishna Murthy was having half share in the plaint schedule house property bearing Door Nos.8/1, 8/2 and 8/3, therefore, the plaintiff No.1 could not get more than half share, since his vendor had got half share in the said property. The plaintiff No.1 died during the pendency of the suit and the plaintiff Nos.2 and 3 are added as legal representatives of the deceased plaintiff No.1. The appellants never questioned the sale deed of the plaintiff No.1. As narrated supra, A.G. Krishna Murthy, the vendor of the plaintiff No.1, was not having absolute rights in the plaint schedule property and he had only half share in the plaint schedule property. Therefore, at best, A.G. Krishna Murthy had the

right to execute the registered sale deed in respect of his undivided half share, but not in the total plaint schedule property.

20. The learned counsel for the appellants would contend that the suit is barred by limitation. As seen from the material available on record, the defendant Nos.3 and 5 are claiming rights by virtue of the registered Will dated 30.09.1978 executed by Lakshamma and the said Lakshamma died on 22.09.1984. During the lifetime of Lakshamma, no rights would accrue to the defendant Nos.3 and 5 in the plaint schedule property. As noticed supra, Lakshamma died on 22.09.1984, and the suit was filed on 16.10.1995. Therefore, the defendant Nos.3 and 5, who are claiming title in the schedule properties in question, were not having any right prior to 22.09.1984. Admittedly, the defendant Nos.3 and 5 did not issue any written notice denying the right of the original plaintiff within 12 years prior to the filing of the suit. It is not at all the case of the appellants that they have issued a legal notice to the original plaintiff/plaintiff No.1 denying his right and title over the same in the schedule property. Therefore, for the aforesaid reasons, the suit for partition was filed within the period of limitation and there is no substance in the contention of learned counsel for the appellants that the suit was not filed within the period of limitation.

21. In the present case, on appreciation of the entire evidence on record, the First Appellate Court, after framing the points for consideration as required under Section 96 of the Code of Civil Procedure, 1908, modified the decree and judgment passed by the trial Court holding that the plaintiffs are entitled to

half share in the plaint schedule house property bearing Door Nos.8/1, 8/2 and 8/3. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellants did not arise or remain for consideration. This Court is satisfied that this second appeal did not involve any substantial question of law for determination.

22. In the result, the second appeal is **dismissed**, confirming the judgment and decree passed by the First Appellate Court. Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeal.

V. GOPALA KRISHNA RAO, J.

Date: 16.03.2026

SRT