

**(2013) 04 AP CK 0001**

**Andhra Pradesh High Court**

**Case No:** Second Appeal No. 558 of 1997 and Cross Objections (SR) No. 72303 of 1997

K. Salamma

APPELLANT

Vs

K. Jayarama Rajulu

RESPONDENT

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**Date of Decision:** April 1, 2013

**Citation:** (2014) 4 ALT 370

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**Judgement**

Samudrala Govindarajulu, J.

The second appeal is filed by the defendants and the cross objections herein are filed by the plaintiffs. In the trial Court, the sole plaintiff who died pending the suit, filed the suit for partition by way of dividing the plaint schedule property of Ac. 13-75 cents in S. No. 48 of Ponnagallu village, Puttur Taluk, Chittoor District into" 2 bits of Ac. 12-24 cents on the Southern side and Ac. 1-51 cents on Northern side and allotting southern Ac. 12-24 cents to the plaintiff and for delivery of the same. It is the plaintiff's case that the plaint schedule property jointly belongs to the plaintiff Kosuri Subbaraju and his brother-in-law Konduri Venkata Swamy Raju and that the 1st defendant is wife and the defendants 2 to 10 are children of Late Venkata Swamy Raju and that the plaintiff is entitled to southern Ac. 12-24 cents out of the suit land. On the other hand, the defendants contend that the schedule property never jointly belonged to the 1st plaintiff and Venkata Swamy Raju and that the 1st plaintiff sold away the suit land to Venkata Swamy Raju under Ex. B-1 registered sale deed dated 27.06.1919 and that since then Venkata Swamy Raju and after him, his legal representatives have been in possession and enjoyment of the suit property in their own right and that their possession is open and hostile to the plaintiffs and so the defendants prescribed title to the suit property by adverse possession also and that the plaintiff is not entitled for partition of the suit property. After trial, the then trial Court (Subordinate Judge's Court, Chittoor) dismissed the suit. On appeal by the plaintiffs, the then lower appellate Court (Additional District Judge's Court, Chittoor) allowed the appeal and remanded the suit to the trial Court giving directions to frame additional issues and giving liberty to adduce additional evidence to both the parties. As against the said remand order, previously second appeal No. 506 of 1980

was filed in this Court. The said second appeal was dismissed by this Court directing the trial Court to dispose of the suit on merits. Thereupon, the suit was made over to Subordinate Judge, Tirupathi on the point of territorial jurisdiction. After adducing additional evidence, the trial Court dismissed the suit upholding all the contentions of the defendants. On appeal by the plaintiffs, the lower appellate Court allowed the appeal and passed preliminary decree for partition of the plaint schedule property into two equal shares and for allotment of one such share to the plaintiffs and the other share to the defendants, after working out equities in between the parties. Questioning the same, the defendants filed this second appeal and the plaintiffs filed cross objections herein. The then Learned Judge of this High Court admitted the second appeal on ground No. 43 of the Memorandum of grounds Second Appeal naming the same as substantial question of law to be determined herein. It is as follows:

"43. The Court below failed to consider that the kist receipts Ex. B-2 to B-19, B-22 to B-24, B-59, B-60 and B-63 for a period of more than 25 years clearly establish that the defendants and their predecessors are enjoying the suit property as of a right and hence even perfected title by adverse possession."

During arguments in this matter, the appellants' counsel contended that ground No. 63 of Memorandum of grounds of Second Appeal contains substantial questions of law. This Court finds that they do constitute substantial questions of law herein. They are as follows:

"(a) Whether the defendants have perfected title to the suit land by adverse possession as pleaded and as held by the trial Court.

(b) Whether the decree for partition into two equal shares can be passed in the absence of documentary evidence as held by the Court below basing upon presumption and surmises and conjectures.

(c) Whether a decree for partition can be granted into 2 equal shares, in the absence of a pleading and evidence solely basing upon presumption.

(d) Whether the judgment under appeal is perverse as it did not consider at all various important documents namely, sale deed, cist receipts, extract of adangals, letters written by the 1st plaintiff, patta transfer application and oral evidence etc., and whether it is sustainable under law.

(e) When the boundaries of Ex. B-1 sale deed tally with the S. No. 48, whether the boundaries of the sale deed should prevail over the extent of land mentioned in the sale deed".

At the outset, the appellants' counsel submitted that the defendants/appellants are not pressing the ground of acquisition of the title to the suit property by adverse possession. Therefore, this Court need not discuss and give findings on the above ground No. 43 and ground No. 63(a) of memorandum of grounds of this appeal

which were shown as substantial questions of law.

2. Ex. B-1 is the document of title on which the defendants rely for the purpose of establishing title to the entire suit property. There is no dispute that the entire suit property of Ac. 13-75 cents originally belonged to the deceased 1st plaintiff by name Kosuri Subbaraju. The defendants contend that Konduri Venkata Swamy Raju purchased the suit property from Kosuri Subba Raju under Ex. B-1 registered sale deed dated 27.06.1919. Under Ex. B-1, Venkata Swamy Raju purchased 50 guntas of land from Subba Raju. In my opinion, there is no significance to be given for Telugu words "Puma, Jaribu Guntalu" mentioned in Ex. B-1. "Punja" means dry land. "Jaribu" means farm, as distinguished from "Jarib" meaning a current coin or land measure (see "A glossary of Judicial and Revenue terms and of useful words occurring in official documents relating to the administration of the Government of British India compiled and published under the Authority of the Court of Directors of the East-India Company, by H.H. Wilson). There is no dispute in this second appeal that in that part of the State, 15 guntas of land is equivalent to Ac. 1-00. Therefore, what was purchased by Venkata Swamy Raju under Ex. B-1 was 50 guntas of land equivalent to Ac. 3-33 1/2 cents only and not the entire suit and of Ac. 13-75 cents.

3. Ex. B-1 reads that the deceased 1st plaintiff Subba Raju sold the said land to Venkata Swamy Raju in No. 37 i.e., Pymaish No. 37. According to the defendants, there is mistake in giving Pymaish number in Ex. B-1 and that instead of Pymaish No. 36 by mistake Pymaish No. 37 was given. Placing reliance on *Sabhaji v. Nawalsingh* (1) AIR 1928 Nagpur 4 and AIR 1952 90 (Nagpur) of the Nagpur High Court, it is contended by the appellants counsel that Section (sic) for pleading an proving mistake relating to Pymaish number occurred in Ex. B-1. Both the above Nagpur decisions relate to contracts and not to registered instruments of conveyance. Division Bench of the Madras High Court in *Rangasami Ayyangar v. Souri Ayyangar* (3) (1920) XXXIX Indian Law Reports 792 (Mad.) held that combined effect of Section 97 of the Evidence Act, 1872 and of Section 31 of the Specific Relief Act, 1963 leaves no room for doubt that the defendant can resist the suit on the ground that what was sold to him was different from what the document described. However, in the case on hand, the defendants are not pleading any "oral agreement or statement" for the purpose of contradicting, varying adding to or subtracting from its terms, in order to debar the defendants either from pleading or from letting in evidence relating to mistake in Pymaish number mentioned in Ex. B-1. Therefore, it is open for the defendants to let in evidence to the effect that what was sold under Ex. B-1 was land in Pymaish No. 36 and not in Pymaish No. 37. At this stage, there is no dispute between the parties that old Pymaish No. 37 is equivalent to new S. No. 47 measuring Ac. 16-30 cents which is Gutta Poramboke; whereas old Pymaish No. 36 is corresponding to New S.No. 48 measuring Ac. 13-75 cents which is the suit land. In any event, it remains that what was purchased by the defendants' predecessor Venkata Swamy Raju under Ex. B-1 from the 1st plaintiff was only 50 Guntas equivalent to Ac. 3-33 1/3 cents and nothing more. Having purchased only

Ac. 3-33 1/3 cents of land under Ex. B-1 sale deed, the defendants want to resist the plaintiffs' claim for the entire suit land of Ac. 13-75 cents.

4. It is next contended by the appellants' counsel that boundaries prevail over the extent mentioned in Ex. B-1 sale deed. It is pertinent to note at this stage that Ex. B-1 does not read that 50 guntas of land purchased thereunder was the entire extent in that Pymaish number. No doubt, Ex. B-1 does not also read that 50 guntas of land purchased thereunder was part of that Pymaish number. Ex. B-1 gives boundaries for the land of 50 guntas purchased thereunder, as East- Cattle track, South-Land of Chandragiri Kondareddy, West -Tank canal and North- Nallaralla Gutta. The appellants' counsel pointed out from Ex. B-41 combined sketch/village map and Ex. B-74 field measurement book (field sketch) for S.No. 48 that Eastern boundary for suit S.No. 48 is Cart Track in S. Nos. 49 and 55 and that therefore what was purchased under Ex. B-1 extends upto the said Cart Track on the East. After making comparison of the boundaries contained in Exs. B-1 with Exs. B-41 and B-74, the lower appellate Court came to the conclusion that Western boundary and Northern boundary mentioned, in Ex. B-1 are not tallying with the suit property of Ac. 13-75 cents in S.No. 48. From the said observation of the lower appellate Court, it follows that land of 50 guntas or Ac. 3-33 1/3 cents covered by Ex. B-1 sale deed is abutting eastern boundary and southern boundary of S.No. 48 and not whole of the land covered by S.No. 48. Observation of the lower appellate Court that Venkata Swamy Raju could have purchased the cultivable land other than Nallaralla Gutta in S.No. 47 under Ex. B-1, is erroneous. Ex. B-26 certified copy of memorandum of land transfer which is stated to have been signed by both Kosuri Subbaraju and Konduri Venkata Swamy Raju indicates that what was sold under Ex. B-1 registered sale deed dated 27.06.1919 is 50 guntas of land in Pymaish No. 36 and not in Pymaish No. 37.

5. The seller and the purchaser applied for transfer of land under Ex. B-26 in pursuance of the said sale deed Ex. B-1. In Ex. B-26, column No. 8 relating to total extent of land in that number is given as 50-0-0 and column No. 10 relating to extent of land to be transferred is shown as 50-0- 0. Therefore, it is sought to be contended by the appellants' counsel that total extent of land in Pymaish No. 36 was sought to be transferred and agreed to be transferred by both the parties in pursuance of Ex. B-1 registered sale deed dated 27.06.1919. Ex. B-1 sale deed is for 50 guntas of land only and not for Ac. 50-00 of land. At no point of time, Pymaish No. 36 contained Ac. 50-00 of land. Therefore, mentioning of 50-0-0 in column No. 8 of Ex. B-26 is for 50 guntas or it must be an. accidental slip. Ex. B-26 undoubtedly reiterates the extent mentioned in Ex. B-1 sale deed viz., 50 guntas of land. Ex. B-26 is useful to the defendants to the extent that mentioning of Pymaish No. 37 in Ex. B-1 is a mistake for Pymaish No. 36.

6. Since all the boundaries in Ex. B-1 do not tally with boundaries for S.No. 48, the principle that boundaries prevail over the extent mentioned in Ex. B-1 sale deed, is not available to the defendants. Further, intention of the parties in executing Ex. B-1

for 50 guntas of land only unequivocally indicates that what was intended to be sold under Ex. B-1 was only 50 guntas of land and not any more extent of land. Total extent of the suit land is of Ac. 13-75 cents and it is equivalent to 207 guntas approximately. Under the principle of "boundaries prevail over the extent", the defendants cannot knock away 207 guntas of land while purchasing only 50 guntas of land under Ex. B-1.

7. Exs. A-2 and A-3 are ek sal pattas given by Tirumala Tirupathi Devasthanams in favour of Kosuri Subbaraju on 25.06.1930 and 01.05.1942 respectively for total extent of 147.8 guntas comprising 50 guntas in pymaish No. 36 and 97.8 guntas in pymaish No. 27. Exs. A-2 and A-3 may not have any relevance in the present suit proceedings, as Kosuri Subbaraju sold away 50 guntas of land to Venkata Swamy Raju under Ex. B-1 sale deed in the year 1919 itself.

8. In view of Ex. B-1 sale deed for 50 guntas of land equivalent to Ac. 3-33 1/3 cents, the defendants are not entitled for any land over and above the extent mentioned in Ex. B-1.

9. The lower appellate Court jumped to the conclusion that each of the parties is entitled to half share in the suit land on the ground of both Subbaraju and Venkata Swamy Raju being joint pattadars for the south (sic. suit) land. Exs. A4 and A-23 copies of No. 2 adangals for the fasli years 1368 to 1370 and 1367 show that both Subbaraju and Venkata Swamy Raju were joint pattadars and joint possessors of the lands in S.No. 48 and Pymaish No. 36 respectively. They undoubtedly indicate even after Ex. B-1, Kosuri Subbaraju has been joint pattadar and joint possessor of the suit land along with Konduri Venkata Swamy Raju. Ex. A-15 is copy of No. 2 adangal for fasli 1369. It shows that suit land of Ac. 13-75 cents in S.No. 48 stood registered in the names of Subbaraju and Venkata Swamy Raju, but Venkata Swamy Raju cultivated Ac. 1-50 cents with Bengal gram crop and Subbaraju was in possession of Ac. 12-25 cents. Ex. A-15 does not show with what crop the land of Ac. 12-25 cents was cultivated by Subbaraju. Perhaps taking advantage of the said entries, the deceased 1st plaintiff wanted to knock away Ac. 12-24 cents out of the suit land of Ac. 13-75 cents. Exs. A-17 and A-18 are copies of No. 10(1) accounts. Ex. A-17 is for 1360 fasli and it shows that patta No. 3A is registered in the name of Venkata Swamy Raju for an extent of Ac. 3-20 (3.2) cents in Pymaish No. 36, whereas patta No. 3 standing in the name of Subbaraju was for Ac. 5-90 cents in pymaish No. 27. Ex. P-18 also repeats the same entries for 1366 fasli. Entries in Exs. A-17 and A-18 are almost near to the extent of 50 guntas i.e., Ac. 3-33 1/3 cents purchased by Venkata Swamy Raju under Ex. B-1 sale deed. In that view of the matter, conclusion of the lower appellate Court that each of the parties is entitled for half share in the suit land is baseless and hasty. The defendants are entitled for only Ac. 3-20 cents of land as per their predecessors' patta or at best Ac. 3-33 1/3 cents as per Ex. B-1 sale deed and nothing more.

10. Therefore, I find on ground Nos. 63(b) and (c) that decree for partition of the suit property into two equal shares passed by the lower appellate Court is based on presumption, surmises and conjectures and should not have been granted in the absence of pleading and evidence; on ground No. 63(d) that though Judgment of the lower appellate Court is not perverse as such, the lower appellate Court did not consider contents of important documents like No. 2 adangals, No. 10(1) Accounts, patta transfer application, sale deed etc and is therefore vitiated; and on ground No. 63(e) that boundaries in Ex. B-1 sale deed partly tally with S.No. 48 and partly do not tally as indicated above and therefore, the question of boundaries of the sale deed prevail over extent of land mentioned therein, has no application herein. Finally, this Court is of the opinion that the defendants are entitled for Ac. 3-33 1/3 cents in S.No. 48 and the plaintiff is entitled for balance of the suit land viz., Ac. 10-41 2/3 cents in S.No. 48. In the result, the second appeal and cross objections are disposed of modifying decree of the lower appellate Court and directing partition of the suit land of Ac. 13-75 cents in S.No. 48 and allotment of Ac. 10-41 2/3 cents in favour of the plaintiffs and Ac. 3-33 1/3 cents in favour of the defendants having regard to equities and good and bad qualities. No costs.