Thatraju Appalaswamy Vs Sangamreddy Appalaswamy and Others

SA No''s. 609 and 610 of 1993

Court: Andhra Pradesh High Court

Date of Decision: Nov. 22, 2002

Citation: (2004) 1 ALD 20 : (2003) 6 ALT 263

Hon'ble Judges: Dubagunta Subrahmanyam, J

Bench: Single Bench

Advocate: D. Ramalingaswamy, for the Appellant; K. Subrahmanyam, for the Respondent

Judgement

Dubagunta Subrahmanyam, J.
S.A. No. 609 of 1993 is filed against the judgment dated 14.12.1992 in A.S. No. 86 of 1987 on the file of

Additional District Judge, Vizianagaram, setting aside the judgment and decree dated 31.7.1987 in O.S. No. 90 of 1980 on the file of Subordinate

Judge, Vizianagaram. S.A. No. 610 of 1993 is filed against the judgment dated 14.12.1992 in A.S. No. 87 of 1987 on the file of Additional

District Judge, Vizianagaram, setting aside the judgment and decree dated 31.7.1987 in O.S. No. 49 of 1982 on the file of Subordinate Judge,

Vizianagaram. Common judgment was passed by the Subordinate Judge, Vizianagaram, in O.S. No. 49 of 1982 and O.S. No. 90 of 1980.

Similarly a common judgment was passed by the Additional District Judge, Vizianagaram, in A.S.Nos.86 and 87 of 1987. The plaintiff in O.S. No.

49 of 1982 is the appellant in S.A. No. 610 of 1993. He is the first defendant in O.S. No. 90 of 1980. He is the appellant in S.A. No. 609 of

1993. I propose to dispose of both the appeals by common judgment as the disputed facts and evidence are identical in both the appeals. The

parties as they are arrayed in O.S. No. 90 of 1980 will be referred to as such in the course of this judgment.

2. Necessary facts for the disposal of these appeals are as follows:

Papayya, Appalaswamy, Venkayya and Atchayya are the brothers and members of a Hindu joint family. Plaintiffs 1 and 2 claimed that they are the

sons of Papayya. Third plaintiff is the wife of Appalaswamy who died issueless. Second defendant is the wife of Venkayya who also died.

Atchayya predeceased his brothers and died unmarried. The plaintiffs claimed that the plaint "A", "B" and "C" schedule properties are the joint

family properties and plaintiffs 1 and 2 are entitled for half a share in plaint schedule properties and the second defendant is entitled for the

remaining half share in the plaint schedule properties. Third plaintiff claimed that she is entitled to be maintained by the plaintiffs 1 and 2 and the

second defendant from the income out of the plaint schedule properties. She claimed annual maintenance at the rate of Rs.1500=00 and a charge

over the plaint schedule properties. Plaint "A" schedule consists of agricultural lands. Plaint "B" schedule consists of a residential hut. Plaint "C"

schedule consists of movable properties. Defendants 1 and 2 resisted the suit. A written statement was filed by the first defendant which was

adopted by the second defendant by filing a memo. They pleaded that plaintiffs 1 and 2 are not the legitimate children of Papayya. They also

claimed that long back there was a partition and Papayya and Appalaswamy took their separate shares by metes and bounds in the joint family

properties. They have also pleaded that one brother died issueless and as Papayya and Appalaswamy died prior to 1940 by principle of

survivorship, the sole surviving brother, namely, Venkayya, who is the husband of the second defendant, alone became entitled to all the joint

family properties. They claimed that after the death of her husband, the second defendant became absolute owner of the joint family properties. It

is their further plea that plaint "B" schedule house is the exclusive property of the second defendant. They have also claimed that some of the

properties covered by plaint "A" schedule, namely, Sy.Nos.96/18, 20, 13, 9, 3, 99/10 and 99/14 are purchased by the second defendant under a

registered sale deed dated 12.5.1975 and they never formed part of the joint family properties. The first defendant claimed that he purchased

entire plaint "A" schedule properties under a registered sale deed dated 13.5.1980 from the second defendant and he is entitled for the entire plaint

"A" schedule property. Plaintiffs 1 to 3, as already noticed, filed the suit O.S. No. 90 of 1980 seeking partition and separate possession of half

share of plaintiffs 1 and 2 and for maintenance for the third plaintiff. The first defendant in O.S. No. 90 of 1980 filed a separate suit for permanent

injunction against plaintiffs 1 to 3 in O.S. No. 58 of 1980 in District Munsiff"s Court, Gajapathinagaram and subsequently the said suit was

transferred to Subordinate Judge at Vizianagaram and numbered as O.S. No. 49 of 1982. The respective pleadings of the parties in O.S. No. 49

of 1982 are identical to the respective pleas in O.S. No. 90 of 1980. In both the suits the trial court settled appropriate issues for trial. At the fag

end of the trial in the two suits, the second defendant died. Defendants 3 and 4 are brought on record as legal representatives of the second

defendant. They did not file any additional written statement in the suit. It tantamounts that they adopted the stand of the second defendant who

adopted the written statement filed by the first defendant. On a consideration of the evidence available on record, the trial court dismissed the suit

in O.S. No. 90 of 1980 and decreed the suit in O.S. No. 49 of 1982 by its common judgment. The plaintiffs preferred two separate appeals

before the Additional District Judge, Vizianagaram, aggrieved by the common judgment in the two suits. The Appellate Court reversed the

judgment passed by the trial court. However, the Appellate Court held that plaint "B" schedule property is the exclusive property of the second

defendant. It also further held that properties covered by Ex.B.3 sale deed in favour of the second defendant are her exclusive properties. It also

held that movables in plaint "C" schedule are not in existence. Excluding plaint "B" and "C" schedule properties, the Appellate Court decreed the

suit for partition regarding the properties covered by the plaint "A" schedule other than properties covered by Ex.B.3 sale deed directing division

of those properties into two separate shares and allotting half share to the plaintiffs 1 and 2 and allotting remaining half share to the defendants 3

and 4 in the suit. It granted maintenance 3rd plaintiff at the rate of Rs.75=00 per month and created a charge over plaint "A" schedule property

except Ex.B.3 property. It dismissed the suit in O.S. No. 49 of 1982. Aggrieved by the common judgment of the Appellate Court, 2nd defendant

preferred the present two separate appeals.

3. At the time of admission of these appeals, the learned Admission Judge treated the following grounds formulated in the memorandum of grounds

of appeals as substantial questions of law that arise for consideration in these appeals.

S.A. No. 609 of 1993:

1. Whether the Appellate Court committed error of law in reversing the well considered judgment and decree of the trial court?

2. Whether or not the lower Appellate Court should have held that the onus that lie on the respondents - plaintiffs to establish that the family was

joint and that it possessed the properties set out in the schedule was not shifted on the defendants because the defendants have taken up the plea

that there was division in the joint family of the plaintiffs in the year 1920 and that the plaintiffs did not discharge that onus and consequently the suit

is liable to be dismissed?

3. Whether or not the lower Appellate Court erred in law in holding that the plaintiffs 1 and 2 are the legitimate sons when they were born to a

Harijan woman and a Telaga father, when no valid marriage was proved between them and in decreeing the suit for partition in their favour without

a valid finding that they are legitimate sons?

4. Whether or not the lower Appellate Court erred in law in holding that the defendants had admitted that the "A" schedule property is the joint

family property solely on the ground that the defendants had pleaded that there was partition in the family in 1920 particularly when that plea was

denied by the plaintiffs and also otherwise not accepted?

5. Whether or not the lower Appellate Court erred in law in acting on an admission wrongly inferred from the plea of partition in 1920 taken by the

defendant - appellant in decreeing the suit for partition of ''A'' schedule property and creating a charge on the said property in favour of the third

plaintiff when the plaintiffs on whom the onus lie have miserably failed to establish that ''A'' schedule property is joint family property?

6. Whether or not the lower Appellate Court erred in law in presuming that there existed joint family property without there being an iota of

evidence on the part of the respondents - plaintiffs that once ''A'' schedule property was the joint family property?

7. Whether or not the lower Appellate Court should have held that the 1st defendant in O.S. No. 90 of 1980 and the plaintiff in O.S. No. 49 of

1982 had validly purchased under Ex.B.2 and was in continuous possession since then and that the plaintiffs in O.S. No. 90 of 1980 who are the

defendants in O.S. No. 49 of 1982 have miserably failed to establish that the properties covered by Ex.B.2 are their joint family properties?

S.A. No. 610 of 1993:

1. Whether the Appellate Court committed error of law in reversing the well considered judgment and decree of the trial court?

2. The lower Appellate Court failed to see that the Sangamreddi Amannamma admittedly executed the registered sale deed and conveyed the suit

properties to the appellant and hence the burden of proof is on the respondents to prove that the sale deed is not validly executed?

3. Whether or not the lower Appellate Court should have held that the onus that lie on the respondents - defendants to the suit properties was not

shifted to the plaintiff, that the defendants did not discharge that onus and consequently the suit is to be decreed?

4. Whether or not the lower Appellate Court erred in law in holding that the defendants 1 and 2 are the legitimate sons when they were born to a

Harijan woman and a Telaga father, when no valid marriage was proved between them, and in dismissing the suit in their favour without a valid

finding that they are legitimate sons?

5. Whether or not the lower Appellate Court erred in law in presuming that there existed joint family property without there being an iota of

evidence on the part of the respondents - defendants that once schedule property was the joint family property?

6. Whether or not the lower Appellate Court should have held that the 1st defendant in O.S. No. 90 of 1980 and the plaintiff in O.S. No. 49 of

1982 had validly purchased under Ex.B.2 and was in continuous possession since then and that the plaintiffs in O.S. No. 90 of 1980 who are the

defendants in O.S. No. 49 of 1982 have miserably failed to establish that the properties covered by Ex.B.2 are their joint family properties?

4. POINTS: In O.S. No. 90 of 1980 the lower Appellate Court decreed the suit for partition of plaint "A'' schedule property excluding the

property covered by Ex.B.3 sale deed. It negatived the claim of the plaintiffs regarding plaint "B" schedule properties as well as property covered

by Ex.B.3 sale deed. The plaintiffs did not prefer any appeal or cross objections regarding the dismissal of their claim regarding those properties.

Therefore, in the present appeal this court has to consider the impugned judgment regarding plaint "A" schedule property excluding Ex.B.3

property.

5. Plaintiffs 1 and 2 are the sons of Papayya. According to the appellant, plaintiffs 1 and 2 are the illegitimate sons of Papayya and therefore they

are not entitled for any share in the suit property. It is the further plea of the appellant that as Papayya did not have children through his legitimate

wife, after the death of Papayya and other brothers, the husband of the second defendant alone survived and therefore the entire joint family

property became his exclusive property. There is no evidence whatsoever to show that plaintiffs 1 and 2 are the illegitimate children of Papayya.

On the other hand, there is positive evidence adduced by the plaintiffs indicating that plaintiffs 1 and 2 are the legitimate children of Papayya. The

finding of the lower Appellate Court is also to the effect that plaintiffs 1 and 2 are the legitimate children of Papayya. Therefore, when legitimate

sons of one of the coparceners are available, there is no question of Venkayya, one of the coparceners, alone becoming the absolute owner of the

joint family property by the rule of survivorship. Therefore, the second defendant after the death of her husband did not become the absolute

owner of the joint family property.

6. It is seriously contended on behalf of the appellant that burden was wrongly placed by the lower Appellate Court on the appellant to prove that

the plaint "A" schedule properties are not the properties of the joint family. In the present case, there is no question of placing the burden of proof

on a wrong person. After both parties adduced evidence, for giving appropriate findings entire evidence is to be taken into consideration by the

courts. Even according to the defendants 1 and 2 except the property covered by Ex.B.3, the remaining properties were the joint family properties

of Papayya and his brothers including the husband of the second defendant. Therefore, when those properties are joint family properties, naturally

the plaintiffs 1 and 2 being the sons of one of the coparceners will be entitled for a share in the said joint family property. To get over this difficulty,

the defendants 1 and 2 pleaded that there was a partition long back and in that family partition, Papayya took his own share by metes and bounds.

The earlier partition pleaded is to be proved by appellant. No evidence was adduced to show that at any point of time prior to the death of

Papayya and his other brothers, there was a partition and in that partition, Papayya got certain properties to his exclusive share. If the version of

the defendants 1 and 2 is true, besides suit properties there must be some other properties belonging to the joint family and those properties would

have fallen to the share of Papayya and the husband of the third plaintiff. Therefore, entries in Revenue Records would be available to prove that at

one point of time Papayya as well as the husband of the third plaintiff possessed some property belonging to the joint family after partition as their

own property. No such evidence was adduced by the defendants 1 and 2. Further, the said plea of partition cannot be accepted in the present

case. If there was a partition, there is no question of husband of the second defendant becoming the owner of the entire joint family properties by

the rule of survivorship. This is the inconsistency in the case set up by the defendants 1 and 2. It is no doubt true that the defendants are entitled to

take inconsistent pleas. However, there must be evidence to indicate that at least one of the inconsistent pleas taken by them is true and correct. In

the present suit there is no evidence to prove the earlier partition pleaded by the defendants 1 and 2. Then the other contention regarding defendant

No. 2''s husband succeeding to the entire joint family property by survivorship falls to the ground the moment the court accepted that plaintiffs 1

and 2 are the legitimate children of Papayya. Therefore, I do not find any merits in the present appeals. In fact no substantial question of law arises

for consideration in the present appeals in the circumstances of the present appeals. If the first defendant had purchased the entire plaint ''A''

schedule property from the second defendant under Ex.B.2 sale deed, he would derive title to Ex.B.2 property only to the extent of the second

defendant having title to the said property. In the present circumstances of the case second defendant had got only half share in plaint "A" schedule

property excluding Ex.B.3 sale deed property. She could validly convey undivided half share and Ex.B.3 sale deed property alone to the first

defendant under Ex.B.2 sale deed. She cannot convey entire property to the first defendant under Ex.B.2 sale deed.

7. There is some error committed by the lower Appellate Court while passing the decree in favour of the plaintiffs. It is apparent on the face of the

record. Defendant No. 2 sold the entire plaint ''A'' schedule property to the first defendant under Ex.B.2 sale deed. She did not claim any share in

plaint "A" schedule property. After her death, her legal representatives, namely, defendants 3 and 4 also did not claim any share in plaint "A"

schedule property. In fact defendants 2 to 4 did not claim at any stage of the trial any share in plaint ''A'' schedule property. They did not dispute

the validity of Ex.B.2 sale deed executed by defendant No. 2 in favour of the first defendant. Therefore, the half share of defendants 2 to 4 in plaint

''A'' schedule property is the property of the first defendant. Therefore, at the time of passing the preliminary decree for partition, the lower

Appellate Court should have passed the decree ordering division of plaint ''A'' schedule property excluding Ex.B.3 property into two equal half

shares allotting one half share to the plaintiffs 1 and 2 and the remaining half share to the first defendant. Wrongly the lower Appellate Court

allotted the remaining half share to defendants 3 and 4 and not to the first defendant. Such a decree may lead to complications in future. To that

extent, in my considered opinion, the decree granted by the lower Appellate Court is liable to be modified. I accordingly dispose of all these points

in favour of the plaintiffs and against the defendants.

8. S.A. No. 609 of 1993:

In the result, the appeal is dismissed confirming the judgment and decree of lower Appellate Court subject to modification indicated supra. One

half share in plaint "A" schedule property excluding Ex.B.3 property shall be allotted to the shares of plaintiffs 1 and 2 after division by metes and

bounds. The remaining half share shall be allotted to the appellant - first defendant. The other terms of lower Appellate Court decree are

confirmed.

S.A. NO. 610 of 1993:

The lower Appellate Court found that Ex.B.3 property is not the joint family property and it is the exclusive property of the second defendant.

Second defendant sold the said property along with other properties to the first defendant under Ex.B.2 sale deed. Insofar as Ex.B.2 property is

concerned, the plaintiff in O.S. No. 49 of 1982 is entitled for permanent injunction in his favour. However, the lower Appellate Court without

noticing this distinction dismissed the entire suit in O.S. No. 49 of 1982. Therefore, the decree passed by the lower Appellate Court is liable to be

modified.

10. In the result, this appeal is also dismissed subject to the following modification. The plaintiff in O.S. No. 49 of 1982 is granted a decree for

permanent injunction in his favour regarding the property covered by Ex.B.3 sale deed while recognising his right to undivided half share in the

remaining properties described in plaint schedule. In the circumstances of the present appeals, both the parties are directed to bear their own costs

in the two appeals.