

## Arni Ramachandra Reddy (Died) and Others Vs Arni Sulochanamma

**Court:** Andhra Pradesh High Court

**Date of Decision:** Nov. 28, 2006

**Citation:** (2007) 4 ALT 68

**Hon'ble Judges:** P.S. Narayana, J

**Bench:** Single Bench

**Advocate:** R. Subba Rao, for the Appellant; P. Krishna Reddy, for the Respondent

**Final Decision:** Dismissed

### Judgement

P.S. Narayana, J.

Heard the No. 1.

2. Sri Subba Rao, the learned Counsel representing the appellant had pointed out to the substantial questions of law raised by him in the Second

Appeal and would submit that in the light of the facts and circumstances, the following substantial question of law, in substance, would arise for

consideration:

Whether the findings recorded by the Courts below relating to oral partition and factum of possession be sustained in the facts and circumstances

of the case?

The learned Counsel in all fairness would submit that all other questions which had been formulated in the grounds of Second Appeal virtually in

substance would boil down to the said question referred to supra. The learned Counsel had taken this court through the findings recorded by both

the Courts below and had pointed out that the evidence available on record had not been appreciated in proper perspective and this can be taken

as a substantial question of law involved in the Second Appeal.

3. On the contrary Sri Krishna Reddy, the learned Counsel representing the respondent would point out that in the light of the concurrent findings

recorded by both the Courts below on the question of factum of possession, this being a question of fact, the same need not be disturbed in this

Second Appeal.

4. The Parties hereinafter would be referred to as ""plaintiff"" and ""defendants"" as arrayed in O.S. No. 26/85 on the file of district Munsif, Gudur, for

the purpose of convenience.

5. The suit was filed by the plaintiff for the relief of permanent injunction restraining the defendants and their men from interfering with the peaceful

possession and enjoyment of the plaint schedule property. It was pleaded in the plaint as hereunder

The plaintiff is the daughter-in-law of the 1st defendant. Defendants 2 and 3 are the sons-in-law of the 1st defendant and defendants 4, 5 and 6 are

the daughters of the 1st defendant. The 1st defendant had only one son by name Krishna Reddy and the plaintiff is his wife. The 1st defendant and

his son Krishnareddi constituted joint Hindu family owning the suit schedule properties and other properties as joint family properties. The plaintiff

was married to Krishnareddy in or about the year 1962. For about ten years the 1st defendant and his son Krishnareddi constituted as members of

the joint family till about 1971. In the year 1971, the 1st defendant and his son Krishnareddy became divided and partitioned the joint family

movable and immovable properties. The above said partition was oral and not evidenced by any document. In the said partition of the year 1971

the suit schedule properties except item No. 6 fell to the share of Krishnareddi and some other properties, both movable and immovable and cash

of Rs. 5,000/- fell to the share of the 1st defendant. Item No. 6 which is an extent of Acs. 0-69 cents of wet was set apart and allotted to Ami

Ramamma, the wife of the 1st defendant and his son had been living separately enjoying their respective properties paying land revenue. In the year

1977, the wife of the 1st defendant died and her son Krishnareddi performed her botequies at his own cost. With the permission of the defendants

and in return for his services, Krishnareddy was given Item No. 6 which was allotted to his mother towards her maintenance. Thus Krishnareddi

owned and possessed the suit schedule properties since 1971 till his death in the year 1979. He died intestate leaving behind his wife i.e., the

plaintiff and three daughters. During his life time, Krishnareddi was in exclusive possession and enjoyment of the suit properties and after his death,

the plaintiff and her daughters succeeded to the plaint schedule lands and have come to be in possession of the properties as his legal heirs. Two of

the daughters of the plaintiff are married and the third one is a minor and not married. After the death of her husband, the plaintiff in her own right

and on behalf of her daughters is in possession and enjoyment of the suit lands, getting them cultivated and paying land revenue to the government.

A pass book has been issued in respect of the suit lands in the name of the plaintiff.

The plaintiff submits that the defendants have no manner of right in the suit properties. The 1st defendant sold away some of his properties that fell

to his share in the family partition between him and his son Krishnareddi. Since the death of her husband the plaintiff became lonely and without any

male help in the village. About three months back the plaintiff sold away Acs. 1-30 cents in S. No. 679 out of Acs. 1-98 cents. Of late, the

defendants have developed an hostile attitude towards the plaintiff and laying false claim to the suit lands. Ten days back, defendants 1 and 4 to 6

came to Kommalapudi village and threatened the plaintiff to dispossess her from the suit lands unless she parts with some of her properties in their

favour as she has no male children. Hence, the plaintiff is apprehensive that the defendants and their men may at any time interfere with her peaceful

possession and enjoyment of the suit lands and grab them forcibly and as such she is obliged to file the suit for permanent injunction.

6. The 1st defendant filed written statement which was adopted by the other defendants. Several allegations were denied and it was also pleaded

that the suit for permanent injunction on the basis of partition alleged to have taken place in 1971 between the 1st defendant and his late son and

the husband of the plaintiff, that too orally in which partition plaintiff's husband was alleged to have been allotted the plaint schedule properties save

item No. 6, is totally misconceived and is untenable. It was pleaded that the plaintiff's husband was the son of the 1st defendant and defendants 4

to 6 are the daughters. Defendants 2 and 3 are the sons-in-law and plaintiff's husband with the 1st defendant resided together. The plaint schedule

properties, particularly Items 2, 3, 5 and 8 are the self acquired properties of the 1st defendant and he never blended them with any of his ancestral

properties. Further he never treated them as joint Hindu family properties also. The 1st defendant never settle Item No. 6 on his wife and it does of

the belong to the family. The 1st defendant never indicated any share in these items to his son. It was further pleaded that during the lifetime of his

son the 1st defendant never effected any partition with his son by metes and bounds nor did the son ever demand any partition at all. The 1st

defendant never effected any sales of any of the properties alleged to have been allotted to his share. The 1st defendant acquired title over plaint

schedule Item No. 2 under the exchange deed dated 3-6-1950; over Item No. 3 of the plaint schedule under sale deed dated 15-8-1946; over

Item No. 5 of the plaint schedule under the exchange deed dated 21-11-1962 and over Item No. 8 of the plaint schedule under sale deed dated

24-12-1954. It was also further pleaded that the allegations that there was partition in 1971 when plaintiff's husband was allotted plaint schedule

properties to which the plaintiff is alleged to have succeeded is a pure myth. The said allegation is denied. It was further pleaded that Item Nos. 7

and 9 belong to the husband of the 6th defendant and not to the family. Item No. 6 does not belong to the family. Neither the 1st defendant nor his

wife did even surrender Item No. 6 to their son. If any Pattedar pass book is granted to the plaintiff, it must have been obtained by gross

misrepresentation. The same is not binding on the 1st defendant. The 1st defendant was contemplating a partition only after discharging family

debts. The plaintiff demanded a share alone in the properties free of the family liabilities to which the 1st defendant was not agreeable. Forestalling

any possible action that the 1st defendant might take the plaintiff had rushed and sought interim restraint orders on false premises. The allegations

contrary to the acts stated above occurring in the plaint are false. There is no cause of action for the suit.

7. On the strength of these pleadings, the following Issues were settled before the Court of first instance:

1. Whether the oral partition pleaded by the plaintiff in the plaint is true and correct?
2. Whether the plaintiff is in exclusive possession and enjoyment of the plaint schedule properties on the date of suit?
3. Whether the plaintiff is entitled for permanent injunction as prayed for against the defendants?
4. To what relief?

In support of her case, the plaintiff examined herself as P.W.1 and also examined P.W.2, P.W. 3 and P.W. 4 the Field Officer were examined and

Exs. A-1 to A-17 were marked. As against this evidence, D.W.1 and D.W.2 were examined and Exs. B-1 to B-11 were marked. The Court of

first instance on appreciation of the evidence arrived at a conclusion that the stand taken by the plaintiff is the correct stand and ultimately decreed

the suit but however without costs. It is needless to say that the 1st defendant died. The Appeal A.S. No. 24/90 on the file of Principal

Subordinate Judge, Gudur also ended in dismissal confirming the findings of the court of first instance. The appellate Court at para -11 framed the

following Points for consideration:

1. Whether the respondent/plaintiff was in possession of the properties as on the date of filing of the suit?
2. Whether the respondent/plaintiff is entitled for a permanent injunction as prayed for by her?
3. To what relief the respondent/plaintiff is entitled to?

The appellate Court at paras 13 to 31 had discussed all the facts and ultimately came to the conclusion that the Appeal is devoid of merit and

dismissed the Appeal, but however, in view of the relationship of the parties, the parties were directed to bear their own costs. Aggrieved by the

same, the present Second Appeal is preferred.

8. In order to establish her case, the plaintiff examined P.W.1 to P.W. 4 and P.W.1 deposed in detail about the factum of possession and how she

came into possession and she had explained about the payment of cist, the revenue records and placed ample documentary evidence before the

Court to establish her possession. The evidence of P.W.1 is well supported by P.W.2, a close relative who had supported the version of P.W.1.

P.W.3 also deposed about the relationship of the parties and also the partition of the family properties and how the plaintiff had been enjoying the

same. P.W. 4, the Field Officer in Indian Overseas Bank, where from the plaintiff had taken the loan towards crop loan deposed about

hypothecating the crops and the other details. The 6th defendant was examined as D.W.1 and another D.W.2 also was examined. The

documentary evidence Exs. B-1 to B-11 also had been taken into consideration. Though certain cist receipts like Exs. B-4 to B-11 were marked,

the cist receipts Exs. A-1 to A-11 and the ryot pass book in the name of the plaintiff Ex.A-12 and the voters list Ex.A-13 and Ex.A-14 and the

entries Exs. A-15 and A-16 and the certified copy of No. 2 Adangal of Faslies 1393,1394 Ex.A-17 had been discussed at length apart from the

oral evidence of P.W.1 to P.W.3 further coupled with the evidence of P.W.4 on the aspect of factum of possession and ultimately the findings

were confirmed even by the appellate Court. Inasmuch as this is a suit for perpetual injunction simpliciter, the factum of possession being the crucial

question and the same being predominantly a question of fact, especially in the light of the ample documentary evidence i.e., ryotwari pass book

and the cist receipts, when positive findings had been recorded believing the version of the plaintiff by both the Courts below, this Court is of the

considered opinion that no substantial question of law as such would arise for consideration in this Second Appeal.

9. In view of the same, the Second Appeal being devoid of merit, the same shall stand dismissed. However, in the light of the view expressed by

the Courts below relating to the relationship between the parties This Court also is of the considered opinion that as far as the costs are concerned,

the parties to the litigation to bear the same.