

(2006) 03 AP CK 0117

Andhra Pradesh High Court

Case No: Appeal No. 246 of 2002

Maddala Sai Lakshmi

APPELLANT

Vs

Mediseti Lakshmi Narasamma
and Others

RESPONDENT

Date of Decision: March 2, 2006

Citation: (2006) 4 ALD 46 : (2006) 3 ALT 708

Hon'ble Judges: D. Appa Rao, J; B. Prakash Rao, J

Bench: Division Bench

Advocate: V.L.N.G.K. Murthy, for the Appellant; V.S.R. Murthy, for Respondent Nos. 1 to 4,
V.V.L.N. Sarma and A. Venkata Ramana, Amicus curiae, for the Respondent

Judgement

B. Prakash Rao, J.

Heard Sri V.L.N.G.K. Murthy, the learned Counsel appearing for the appellant and Sri A. Venkata Ramana, the learned Counsel who has been appointed to assist the Court as Amicus Curiae, since none appears on behalf of the respondents, though served.

2. The facts of the case, in brief, are that the appellant is the unsuccessful plaintiff who, by way of this appeal, seeks to assail the judgment and decree dated 31-12-2001 in O.S. No. 15 of 2000 on the file of the District Judge, Krishna at Machilipatnam. In the suit filed by the appellant/plaintiff, she sought a declaration that she alone is entitled to plaint "A" to "D" schedule moveable and immovable properties as per the last Will dated 12-3-2000 executed by the testator and for possession of properties from the hands of defendants and for future profits over the schedule properties and costs or alternatively for partition of the schedule properties into two shares and delivery of one share to the plaintiff.

3. The case of the plaintiff principally rests on the basis that the second defendant is her brother. The first defendant is the wife of the deceased. M. Narasimha Rao. The plaintiff claims to have been adopted in the year 1984, which has been subsequently

evidenced by a Deed of Adoption-Ex.A-1 dated 10-9-1996, Whereas the second defendant claims that he was adopted in the year 1975. However, according to the plaintiff, the said adoption was cancelled by a deed-Ex.A-8 dated 9-3-1992. The plaintiff also claims the suit properties alternatively in pursuance of bequeath under the Will-Ex.A-3 dated 12-3-2000 alleged to have been executed by the deceased M. Narasimha Rao. Similarly, defendant Nos. 1 and 2 also claim the suit properties in pursuance of bequeath under a Will-Ex.B-1 dated 26-10-1999 executed by the said M. Narasimha Rao. The case of the plaintiff was that the second defendant is a wayward and therefore, the adoption was cancelled. She has been adopted rightly and therefore, entitled to the property as the adopted daughter or alternatively, as stated above, in pursuance of the will dated 12-3-2000. Hence, the suit.

4. Contesting the claim of the plaintiff, the defendant denied entire allegations and asserted that the second defendant is the adopted son validly made in the year 1975 and even otherwise, in pursuance of the Will dated 26-10-1999 executed by the deceased, they are exclusively entitled to the schedule properties. Therefore, the plaintiff has no title or interest whatsoever of the nature and hence, the suit is liable to be dismissed.

5. With these and other contentions in respect of the pleadings, the Court below framed the following issues.

(1) Whether the will dated 12-3-2000 is true and valid?

(2) Whether the plaintiff is entitled to declaration of title and recovery of possession over the plaint schedule property?

(3) Whether the will dated 26-10-1999 propounded by the first defendant is true and valid?

(4) Whether the plaintiff is entitled to alternative relief as prayed for?

(5) Whether the plaintiff is entitled to future profits? And

(6) To what relief?

Thereafter, both the sides went into trial. On behalf of the plaintiff, P.Ws.1 to 7 were examined and Exs.A-1 to A-10 were marked. On behalf of the defendants, D.Ws.1 to 4 were examined and Ex.B-1 was marked, apart from Exs.X-1 to X-7. Considering the evidence and material on record, the trial Court dismissed the suit upholding the claim of defendant Nos. 1 and 2. Hence, the appeal.

6. Having heard the learned Counsel for the appellant and the Amicus Curiae and on perusal of the material available on record, the question that arises for consideration is whether the plaintiff has any right, title or interest whatsoever in nature in respect of the suit schedule properties either in pursuance of adoption or under the Will. Similarly, the same is the staring question as to the right or title as held by defendant Nos. 1 and 2 on the basis of the adoption as claimed by the

second defendant or in pursuance of the Will dated 26-10-1999.

7. On the totality of the facts and circumstances and especially, in view of the pleas as sought by the plaintiff as well as the defendants, it is amply clear that both have come forward with independent adoptions and also separate Will Deeds. The plaintiff claims that she was adopted in the year 1984 which has been recorded as per the Deed of Adoption dated 10-9-1996 whereas the second defendant claims to have been adopted in the year 1975, apart from the Will Deed dated 26-10-1999. The plaintiff's Will, which is an unregistered one, is marked as Ex.A-3 dated 12-3-2000 alleged to have executed by late Sri M. Narasimha Rao. Apart from the questions as sought to be focused in the Court below from both the sides, exclusively resting their pleas only under the respective Wills, on the other hand claims on either side also rest on the factum and correctness of the adoptions as taken by them. If one of the adoptions is held to be true and correct, the question of any Will does not arise. It is not necessary to go into the same either way. The factum of adoptions, as claimed cannot be relegated to the back. The issues as framed and which have been extracted in the preceding para, the Court below surprisingly did not frame any issues in regard to the adoptions as such, which has been specifically pleaded by both the plaintiff and the second defendant. The issues on record touch only upon the dispute, as if based on the Wills rather than the adoptions. Yet, both the sides went into trial only keeping in view the issues as framed unwittingly. Even looking into the evidence as adduced on either side, it is seen that neither side has concentrated much in proving their respective adoptions, which is a noticeable lapse and fatal. The failure on the part of the Court below in not framing the issues, especially in regard to the adoption, is equally fatal and vitiates the very approach, the findings and the ultimate result, in the suit. Therefore, we are of the opinion that without going into the merits at this stage, it is necessary that appropriate issues have to be framed in regard to the adoptions set up by both the sides and the same requires to be considered on the basis of the evidence as can be adduced by both the sides and finding has to be arrived at before any attempt is made to go into the bequeaths by both the sides.

8. Accordingly, the appeal is allowed and the judgment and decree of the Court below is set aside. The matter is remitted to the Court below for fresh enquiry and disposal on merits after giving notice and opportunity to both the sides. After receipt of the record, the Court below shall frame issues on the factum of adoptions after hearing the counsel on either side. It shall be open for either side to lead any fresh evidence in support of their claims. The appellant is entitled to refund of Court Fee. No costs.

9. Further, we could not restrain ourselves to take note of the fact that in spite of the several attempts made to serve the respondents herein, none appeared. It is pointed out on behalf of the appellant that the interim injunction as granted by this Court in C.M.P. No. 3187 of 2004 has been violated and against which the

respondents have filed separate application for production of vehicle and for taking action against the said violation. It thus evident that in view of the change of hands and the third parties entering the properties appears to have remained beyond the reach of the Court. Hence, liberty is given to the appellant to make an appropriate application before the Court below itself seeking appointment of receiver or for any other reliefs, which would be considered and disposed of in accordance with law.

10. Before parting, we are very often coming across a situation where it is noticed that the issues as framed at the inception are not correctly representing the dispute in between the parties. We are conscious of the fact that immediately after filing any written statement, no serious attention is being paid by either side in the Court below nor due assistance is given at the time of framing issues. No draft issues are being filed at that stage. No attempt is made to point out whether the issues as framed are proper at the stage of commencement of trial. It is only after proceeding with the trial or may be at a later stage, including arguments stage, it is noticed that the issues are not properly framed and it requires reframing. This is a clear instance where the Court below totally lost sight of the core dispute, which arises between the parties, in regard to the adoptions as set up by them in their respective pleadings and yet, we do not find any issue framed thereon. To avoid such lapses or late realization, in every case, before commencement of trial, a specific date has to be posted for hearing both the sides once again on the issues, to see if they have been properly framed or needs any reframing and it is only after such exercise is done, the trial should be allowed to commence and proceeded with. Even at the hearing, both the sides can be called upon to file any draft issues for warranting reframing. This exercise ultimately can safely avoid orders of remand by Appellate Courts, as is being done in this case.

11. The Registry shall accordingly issue necessary instructions to the Courts below in this regard.