

(2007) 5 ALD 804

Andhra Pradesh High Court

Case No: SA No. 495 of 1998

Bussa Chandrakala

APPELLANT

Vs

Bussa Konda Reddy
and Others

RESPONDENT

Date of Decision: July 4, 2007

Acts Referred:

Hindu Succession Act, 1956 " Section 14, 14(1), 14(2)#Specific Relief Act, 1963 " Section 34

Citation: (2007) 5 ALD 804

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

Bench: Single Bench

Advocate: K. Mahipathi Rao, for the Appellant; A. Narasimha Reddy, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Narayana, J.

Heard Sri K. Mahipathy Rao, learned Counsel representing the appellant-4th defendant and Sri Sourab representing Sri

A. Narasimha Reddy, learned Counsel representing the contesting respondents.

2. This Court on 9.10.1998 made the following order:

In view of the substantial questions of law raised in ground No. 15, this second appeal is admitted.

3. The grounds specified as A to F in ground No. 15 of the Memorandum of Second Appeal read as hereunder:

(A) Whether the sale effected by the respondent No. 2 under Ex.A2 is hit by the provisions of compromise decree in OS No. 46 of 1980?

(B) Whether the respondent No. 2 was entitled to sell the suit land to discharge his debts as directed in Ex.B4 and being his legal necessity?

(C) Whether the plaintiff-respondent No. 1 can question the sale Ex.A2 without paying the debts legally due by the father, the respondent No. 2?

(D) Whether the lower appellate Court was justified in giving findings without discussing the oral and documentary evidence?

(E) Whether the suit for mere declaration is maintainable under law?

(F) Whether the plaintiff-respondent No. 1 is entitled to file this suit during the lifetime of respondent No. 2?

4. Sri K. Mahipathy Rao, learned Counsel representing the appellant would maintain that the 2nd respondent, father-in-law of the appellant and

the father of other respondents is no more, but his legal representatives being already on record, a Memo had been filed to the said effect. The,

learned Counsel also would submit that though concurrent findings had been recorded by both the Courts below, the said findings are not in

accordance with law for the reason that the compromise, if any, can be said to be binding only for a limited extent and even otherwise in the light of

Ex.B1, the certificate dated 30.10.1995, issued by the District Co-operative Marketing Society Limited, Mahabubnagar, certifying that the 1st

defendant paid Rs. 13,565/- on 21.12.1989 as per the directions of this Court made in Writ Petition No. 169 of 1989 and the payment was

towards the charge created against the 1st defendant by the Co-operative Department and this liability being the liability of the family and inasmuch

as the family was joint at the relevant point of time, the sale transaction to be taken as having been effected for the purpose of meeting the legal

necessity and hence the Court should have arrived at a conclusion that the sale transaction is valid and binding on the 1st respondent, the plaintiff,

as well. The Counsel also further had taken this Court through the relevant findings, which had been recorded by both the Courts below, and also

the evidence of PW.1, DWs.1 to 3, Exs.A1 and A2, Exs.B1 to B4 and ultimately would conclude that in the light of the same, granting relief of

simple declaration without any prayer for further relief cannot be sustained and hence the second appeal to be allowed.

5. Per contra, Sri Sourab, learned Counsel representing Sri A. Narasimha Reddy, learned Counsel representing the contesting respondent, would

submit that Ex.A1 is the certified copy of the final decree and Ex.A2 is the registration extract of the sale deed dated 30.10.1992, and when the

sale transaction is in contravention of the terms and conditions agreed upon by virtue of compromise, definitely the same is not binding on the

contesting respondent No. 1-plaintiff and in view of the fact that the concurrent findings had been recorded and further there is no acceptable

evidence placed before the Court that the alleged amount due to the Society was during the period of the jointness of the family or otherwise, the

findings recorded by both the Courts below not to be disturbed. The Counsel also would point out that a peculiar stand had been taken that the

same analogy as is applicable in the case of Sections 14(1) and 14(2) of the Hindu Succession Act, 1956, to be extended to the case on hand, but

the said provisions are not applicable at all and hence viewed from any angle, the concurrent findings recorded by both the Courts below to be

confirmed in the second appeal and the second appeal is liable to be dismissed. The Counsel also pointed out that in view of the fact that the 2nd

respondent had a right of life interest by virtue of compromise and since the 2nd respondent died during the pendency of the second appeal, on the

date of the institution of the suit there was no necessity or occasion for the 1st respondent-plaintiff to pray for any further relief apart from

declaration and hence the suit is perfectly maintainable.

6. Heard the Counsel on record and also perused the oral and documentary evidence available on record and the findings recorded by the Court

of first instance and also by the appellate Court.

7. The substantial questions of law, on the strength of which the second appeal had been admitted and the submissions made by the Counsel on

record had already been specified supra. The parties, hereinafter, for the purpose of convenience, would be referred to as plaintiff and defendants

as shown in OS No. 81 of 1992 on the file of District Munsif, Wanaparthy.

8. The 1st defendant in the suit, viz., Bussa Beesi Reddy, shown as 2nd respondent, the father of the plaintiff and defendants 2 and 3 and father-in-

law of 4th defendant, is no more and it is needless to say that his legal representatives are already on record and it is stated that a Memo had been

filed on 11.10.2001 to that effect.

9. The plaintiff instituted the suit for declaration that the sale deed dated 30.10.1992 is not binding on the plaintiff. The averments made in the plaint

are as hereunder:

The plaintiff and the defendants 2 and 3 are the sons of the 1st defendant. The 4th defendant is the wife of the 2nd defendant.

The 2nd defendant herein filed O.S. No. 46/1980 on the file of the District Munsif Court, Wanaparthy, for partition and separate possession

against the plaintiff, the defendants 1 and 3 herein. The suit ended in compromise and decree was passed in terms of compromise. As per the

terms of the compromise an extent of 3 acres in S.No. 20/AA is given to the plaintiff with limited rights and the property has to be devolved in

equal shares among the plaintiff, the defendants 2 and 3. Contravening the terms of compromise, the 1st defendant in collusion with the defendants

2 and 3 sold the above said property to the 4th defendant on 30.10.1992. The said sale is void and illegal and is not binding on the plaintiff.

10. Defendant No. 1 filed written statement with the following averments:

The 1st defendant was given 3 acres in S.No. 20/AA, but terms are not strictly binding on the 1st defendant. The 1st defendant was the Secretary

of the Multipurpose Co-operative Society, Ayyawaripally and lived with dignity, decency and decorum. The 1st defendant was forced to forego

some vested rights in favour of the plaintiff and the 2nd defendant by keeping a small extent for livelihood. All of a sudden the District Co-operative

Marketing Society Limited, Mahabubnagar, charged the 1st defendant on false allegations. The 1st defendant filed W.P. No. 169/1989 on the file

of Hon"ble High Court of Judicature Andhra Pradesh, Hyderabad. The Hon"ble High Court granted stay on condition of payment of half of the

charged liability. To meet the said amount, the 1st defendant approached the plaintiff personally and also issued notice to pay the amount as

ordered by the High Court. The liability arose against the 1st defendant pertains to the period prior to partition. The plaintiff is therefore liable to

pay his share. The sale made by the 1st defendant is legal. The plaintiff had no right to question it. The Court fee paid by the plaintiff is not correct.

11. The 2nd defendant filed the written statement, which was adopted by the 3rd defendant by filing a Memo.

It was pleaded that the contents mentioned in Paras 1 and 2 of the plaint are correct. It was also pleaded that the plaintiff and defendants 1 to 3

had partitioned their lands through compromise. It was further pleaded as follows:

An extent of 3 acres in S.No.20/AA is given to the 1st defendant. The 1st defendant worked as Secretary of the Co-operative Society for several

years. The 1st defendant was unnecessarily prosecuted by the cooperative authorities on the ground of breach of trust during his tenure. The Co-

operative Department charged the 1st defendant with liability. Thereupon the 1st defendant challenged the same in the Hon"ble High Court by filing

a Writ Petition and it is still pending. The Hon"ble High Court directed the 1st defendant to deposit half of the claim pending enquiry. The 1st

defendant made several attempts to repay the amount from the funds of the plaintiff and the defendants 1 and 2. The 1st defendant issued legal

notice on 10.11.1989 to the plaintiff, the defendants 2 and 3 to purchase the extent of land given to him in the compromise decree passed in OS

No. 46/1990. The 1st defendant approached the 2nd defendant to purchase the suit extent from his own funds. Accordingly the 2nd defendant has

purchased an extent of 20 guntas in S.No. 20/AA from the 1st defendant in the name of his wife through a registered document. The sale is for

legal necessity. The claim of the plaintiff is not genuine.

12. 4th defendant filed written statement pleading that the Station House Officer, Pebbair, filed a criminal case against the 1st defendant in Judicial

First Class Magistrate Court, Wanaparthy, on the complaint made by the Co-operative Department, Wanaparthy, and it was also stated that

recovery proceedings were initiated as against the 1st defendant. It was further pleaded in the written statement as follows:

The 1st defendant filed WP No. 169/1989 before the High Court. The Hon"ble High Court stayed the proceedings initiated by the Co-operative

Department. The 1st defendant requested the plaintiff and the defendants 2 and 3 to pay the amount to the Co-operative Department as per the

directions of the Hon"ble High Court in W.P. No. 169/1989. But the plaintiff and defendants 2 and 3 did not care. The 1st defendant also got

issued notice to the plaintiff and the defendants 2 and 3 requesting them to contribute the money or to purchase the land in S.No. 20/AA measuring

3 acres. The 4th defendant by selling her gold ornaments kept by her parents at the time of marriage purchased the said property on 30.10.1992

under a registered document. The 1st defendant was Kartha of the joint family. When the family was joint, the 1st defendant, as Kartha of the

family, failed to pay the misused co-operative amounts by the plaintiff and defendants 2 and 3. To avoid the public auction of the disputed land, the

1st defendant wanted to sell the same to others. The 1st defendant executed registered sale deed in favour of the 4th defendant. The plaintiff in

collusion with the 3rd defendant filed the suit falsely to cause loss to the 4th defendant. The suit is not maintainable and ill-conceived.

13. It appears that the 4th defendant was added as a party by virtue of an order made in IA No. 347 of 1993, dated 16.3.1995, and there had

been recasting of issues, which are as hereunder:

1. Whether the plaintiff is entitled to declaration prayed for?

2. Whether D4 is a bona fide purchaser for value and for consideration?

3. Whether the suit is not properly valued and the Court fee paid there is not proper?

4. To what relief?

14. Before the Court of first instance, the plaintiff examined as PW.1 and Exs.A1 and A2 were marked. Defendant No. 1 examined himself as

DW.1, 4th defendant examined herself as DW.2 and the 2nd defendant examined himself as DW.3 and Exs.B1 to B4 were marked. The Court of

first instance, on appreciation of evidence available on record and also after referring to the decisions in P. Rama Rao v. Srikakulam Municipality

1993 (1) LS 67 and Rakkivala Muthayya v. Swarajyam 1961 (1) An.W.R. 350, came to the conclusion that the plaintiff is bound to succeed and

accordingly decreed the suit with costs. Aggrieved by the same, the 4th defendant carried the matter by way of appeal AS No. 11 of 1996 on the

file of Subordinate Judge, Wanaparthy, and the appellate Court at Paragraph 14 framed the following points for consideration:

1. Whether the sale of 3 acres in S.No. 20/AA of Ayyawaripally Village effected by the 1st defendant in favour of the 4th defendant under original

of Ex.A2 dated 30.10.1992 was to meet legal necessities of 1st defendant?

2. Whether Section 14 of Hindu Succession Act is applicable to the case on hand?

3. Whether the defendant No. 4 is bona fide purchaser for value and for consideration?

4. Whether the judgment and decree dated 20.2.1996 under appeal are liable to be set aside?

5. To what relief?

and proceeded to discuss with the oral and documentary evidence commencing from Paragraphs 15 to 19 and ultimately came to the conclusion

that there are no merits in the appeal and accordingly dismissed the appeal with costs confirming the decree and judgment of the Court of first

instance dated 20.2.1996 made in OS No. 81 of 1992 on the file of District Munsif, Wanaparthy. Aggrieved by the same, the present second

appeal is preferred.

15. The plaintiff was examined as PW.1. Ex.A1 is the certified copy of the final decree in OS No. 46/1980 on the file of District Munsif,

Wanaparthi and Ex.A2 is the registration extract of the sale deed dated 30.10.1992. On behalf of defendants, the 1st defendant examined himself

as DW.1, his daughter-in-law, the 4th defendant, examined herself as DW.2 and the 2nd defendant examined himself as DW.3. Ex.B1 is the

certificate issued by the District Co-operative Marketing Society Limited, Mahabubnagar dated 30.10.1995; Ex.B2 is the office copy of notice

dated 10.11.1989; Ex.B3 is the postal receipt dated 24.11.1989 and Ex.B4 is the certified copy of orders in WPMP No. 187 of 1989.

16., DW.1 deposed that the 2nd defendant filed a suit for partition, which ended in compromise and the suit property was allotted to the 1st

defendant under compromise in OS No. 46 of 1980 and this witness also deposed about the terms of compromise and further deposed that in the

light of the terms which had been agreed upon in OS No. 46 of 1980, the 1st defendant had no right to sell the property in favour of 4th defendant.

DW.1, the 1st defendant, deposed that he got the suit property under compromise decree in OS No. 46 of 1980 on the file of District Munsif,

Wanaparthi, to discharge the liability of Primary Agricultural Co-operative Society, as per the orders of this Court and that he had discharged the

liability by making payment of a sum of Rs. 13,565/- to the District Co-operative Marketing Society, Mahabubnagar. This witness also deposed

that the sale is binding since the said debt to be discharged by him, but in fact the family is liable to discharge the said debt. DW.2, the 4th

defendant, deposed that the 1st defendant was indebted in a sum of Rs. 36,000/- to the Co-operative Society and this Court directed 1st

defendant to pay the amount and since the sons of 1st defendant failed to contribute the amount, 1st defendant intended to sell the suit land and the

same was purchased by her by a registered sale deed after selling her gold ornaments.

DW.3, the 2nd defendant, deposed about the partition and

also deposed that an extent of 3 acres in S.No. 20/AA was given to DW.1 for his maintenance and there was a criminal case against DW. 1 in the

year 1976 for misappropriation, which ended in acquittal. This witness also deposed that the Registrar, Co-operative Society issued notice to

DW.1 for payment of Rs. 26,000/-. DW.1 asked his sons to clear the amount and also issued notices and as the sons of DW.1 failed to pay the

amount due to the Co-operative Society, he intended to sell the landed property to others.

17. In Ex.A1, the plaint schedule property, the subject of controversy, is shown under "C schedule and it was specified that the said property was

given with limited rights and after the death of the 1st defendant, it shall be divided into three equal parts among the plaintiff, defendants 2 and 3.

18. The relationship between the parties is not in serious controversy and the fact that the parties entered into a compromise and the decree was

made in OS No. 46 of 1980 on the file of District Munsif, Wanaparthy, as evidenced by Ex.A1, is also not in serious controversy. Further, the

parties are not raising any serious dispute relating to the specific term agreed upon that the rights were given by the father, the 1st defendant-

DW.1, to enjoy the same with limited rights and after his death, the said property to be shared among the sons. The execution of the sale deed

dated 30.10.1992, the registration extract of which had been marked as Ex.A2, in favour of 4th defendant also is not in serious controversy.

19. It is true that some material had been placed before the Court relating to the amount said to be due by the 1st defendant to the Co-operative

Society in question. Ex.B1 is the certificate issued by the District Co-operative Marketing Society Limited, Mahabubnagar, dated 30.10.1995 and

Ex.B4 is the certified copy of the orders made in WPMP No. 187 of 1989 in Writ Petition No. 169 of 1989 on the file of this Court. When a

limited interest had been created in favour of the father in a partition action under Ex.A1, it is needless to say that Section 14 of the Hindu

Succession Act, 1956 would not come into play at all. However, in all fairness the Counsel representing the appellant would submit that he is not

interested in canvassing the said question in this second appeal.

20. Section 34 of the Specific Relief Act, 1963 reads as hereunder:

Discretion of Court as to declaration of status or right :-Any person entitled to any legal character, or to any right as to any property, may institute

a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a

declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to

do so.

21. Certain submissions had been made that a suit for mere declaration without any further relief cannot be maintained. This contention also cannot

be upheld for the reason that when the suit was instituted for a declaration that the sale deed in question is not binding on the plaintiff, no further

relief could have been prayed for since the 1st defendant was alive and it is needless to say that even as per the terms and conditions agreed upon

under Ex.A1 the 1st defendant to enjoy the property during his lifetime. Hence, it cannot be said that a suit for mere declaration is not maintainable.

It is needless to say that it is for the parties to workout their further remedies in the light of the subsequent events.

22. It is also brought to the notice of this Court that the 1st defendant in the suit, the father of the plaintiff and the defendants 2 and 3 and the

father-in-law of 4th defendant, the appellant herein, is no more, who is shown as 2nd respondent in the second appeal

23. Further specific finding had been recorded by both the Court of first instance and also the appellate Court that no acceptable evidence had

been placed to establish that the discharge of this amount would fall within the concept of legal necessity or that this debt had some nexus with the

alleged joint family. It is needless to say that these findings are predominantly findings of fact and concurrent findings recorded by both the Courts

below normally not to be disturbed in a second appeal and hence the said findings are hereby confirmed.

24. The only question which may have to be decided is that whether the sale transaction in favour of 4th defendant to be upheld as valid or not in

the facts and circumstances of the case. The compromise between the parties being not in serious controversy and further even if the explanation

given by DW.1 to be taken into consideration since the sale effected by him is clearly contrary to the terms of compromise agreed upon between

the parties as incorporated in the certified copy of the final decree-Ex.AI, the findings recorded by both the Courts below cannot be found fault

with. Except these contentions, none other contentions had been advanced before this Court. Hence, viewed from any angle, the second appeal

being devoid of merit, the same is liable to be dismissed.

25. In the result, the second appeal is dismissed. However, in view of the relationship between the parties and also in the light of the peculiar facts

of the case, the parties to the litigation to bear their own costs.

26. At this stage a request is made by the Counsel representing the appellant that liberty may be given to the appellant to pursue the other remedies

since the sale transaction in her favour was held to be invalid. It is needless to say that the appellant is at liberty to pursue her other legal remedies,

if any available to the appellant, in this regard.