

(2007) 11 AP CK 0070

Andhra Pradesh High Court

Case No: S.A. No. 1014 of 1998

Kadiyala Appa Rao (died) per
L.Rs.

APPELLANT

Vs

Kadiyala Kamalamma

RESPONDENT

Date of Decision: Nov. 30, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 107

Citation: (2008) 3 ALD 13 : (2008) 4 ALT 405

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

Bench: Single Bench

Advocate: V.S.R. Anjaneyulu, for the Appellant; N. Srirama Murthy, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Narayana, J.

Heard Sri V.S.R. Anjaneyulu, the learned Counsel representing the appellant and Sri N. Sriram Murthy, the learned Counsel representing the respondent.

2. This Court on 18.12.1998, made the following order:

In view of the substantial questions of law raised in para 17(a) to (e) of the memorandum of grounds of appeal, the second appeal is admitted.

The said grounds read as under:

a) Whether the judgment of the lower appellate Court is in accordance with the provisions of Order 41 of CPC when it failed to consider and framed the issues to be decided in the appeal in the light of Order 41 of CPC.

b) Whether the decree and judgment of the lower appellate Court is correct when it had reversed the findings of fact recorded by the trial Court based on oral evidence, exceeding the powers conferred u/s 107 of CPC.

- c) Whether the lower appellate Court is correct in arriving at a conclusion that Ex.B1 Will is surrounded by suspicious circumstances and the said circumstances are not shattered by the evidence adduced by the defendant.
- d) Whether the lower appellate Court is correct in reversing the well considered findings of the trial Court without considering the oral evidence independently.
- e) Whether the plaintiff is entitled for declaration as prayed for in the circumstances of the present case.

3. The appellant/defendant in the suit O.S. No. 59 of 1989 on the file of the Principal Subordinate Judge, Tenali died and his legal representatives were brought on record, who are at present prosecuting the second appeal. The respondent/plaintiff in the said suit, which was originally instituted as O.S. No. 664 of 1983 on the file of the PDMC, Tenali, filed suit for declaration of title relating to plaint schedule properties and for consequential relief of permanent injunction. The Court of first instance, in the light of respective pleadings of the parties, having settled the issues recording the evidence of P.W.1 and D.Ws.1 to 4 and marking Exs.A1, A2 and Exs.B1, ultimately dismissed the suit giving liberty to the plaintiff to file a separate suit for maintenance as against the properties left by her husband in the hands of defendants. Aggrieved by the same, the matter was carried by way of appeal A.S. No. 85 of 1992 on the file of the IV Additional District Judge, Guntur and the appellate Court on re-appreciation of the evidence available on record, came to the conclusion that the appeal to be allowed in part and the decree and judgment in O.S. No. 59 of 1989 on the file of the Principal Subordinate Judge, Tenali (O.S. No. 664 of 1983 on the file of PDMC, Tenali) dated 25.3.1992 be set aside and the suit is decreed declaring the title of the plaintiff to the plaint schedule properties of Item Nos. 1 to 3, 5 and 6 and dismissed the suit in relation to item No. 4 and the parties were directed to bear their own costs. Aggrieved by the same, the present second appeal is preferred.

4. Sri V.S.R. Anjaneyulu, learned Counsel representing appellant had taken this Court to the respective pleadings of the parties and the reasons recorded by the Court of first instance and held that without proper appreciation of oral and documentary evidence, the said findings had been reversed by the appellate Court. The counsel had also taken this Court through the findings recorded by both the Courts below and also placed strong reliance on certain decisions to convince this Court that substantial questions of law on the strength of which the second appeal is admitted, much arise for consideration in the second appeal.

5. Per contra, Sri Sriram Murthy, learned Counsel representing respondent would maintain that the relationship of respondent/plaintiff with her deceased husband and her status being wife is not in controversy, therefore, the appellate Court is well justified in recording reasons and reversing the judgment and decree of the Court of first instance. Even otherwise, the learned Counsel would submit that all the

findings recorded by the appellate Court being factual findings and normally in a second appeal such findings should not be disturbed. The counsel also placed strong reliance on several decisions to substantiate his submissions relating to suspicious circumstances surrounding Ex.B1- alleged Will dated 2.3.1983.

6. The parties hereinafter referred to as plaintiff and defendant as shown in O.S. No. 59 of 1989 aforesaid. The plaintiff filed suit for declaration of title and for consequential relief of permanent injunction. The plaint averments are that the plaintiff is the legally wedded wife of deceased Kadiyala Seshagiri Rao. The defendant is the brother's son of the said Seshagiri Rao. Seshagiri Rao, the husband of plaintiff possessed plaint schedule properties. He died intestate and issueless. The plaintiff is the only nearest heir under the provisions of the Hindu Succession Act and she succeeded to the entire plaint schedule properties and has been in possession and enjoyment of the same as absolute owner after the death of her husband. Plaintiff, her husband lived together; but, unfortunately, no issues were born. Taking advantage of the same, defendant developed an evil intention to grab the plaint schedule properties. Plaintiff, being a woman, performed the funeral function of her late husband Seshagiri Rao through the defendant with her own monies. Defendant is a person of greed and influenced in the village. After the death of her husband, plaintiff got manures carted in items 3 and 4 of the plaint schedule properties. Defendant attempted to obstruct the plaintiff from conducting agricultural operations. But, on the intervention of neighbouring owners, defendant retreated the scene temporarily. During his lifetime, plaintiff's husband used to cultivate the land personally and after his death plaintiff took possession of the plaint schedule properties and personally cultivating items 1 to 5. The defendant was never in possession of the land and he has no right whatsoever. On account of the obstruction caused by the defendant, the plaintiff got issued a registered notice to the defendant through her advocate. The defendant issued a reply notice dated 25.3.1983 through his Advocate contending that Seshagiri Rao executed a will on 2.3.1983 bequeathing all his properties in his favour. According to the plaintiff, the said will is a rank forgery and was brought into existence by the defendant in conspiracy with his followers and henchmen. Late Seshagiri Rao had great love and affection towards plaintiff and there was no need or necessity for him to deprive the plaintiff of all his properties and drive her into the streets. Hence, the plaintiff is constrained to file the suit for declaration of plaint schedule properties and for consequential injunction. Even if the alleged will dated 2.3.1983 of late Seshagiri Rao is true and executed by him in a sound and disposing state of mind and binding on the plaintiff, as the plaintiff is the sole legatee of all the properties of late Seshagiri Rao, the defendant, under law, is bound to pay maintenance to the plaintiff out of the income derived from the properties which are said to have been bequeathed to him by late Seshagiri Rao. The defendant filed written statement stating that the deceased Seshagiri Rao, who is the husband of plaintiff, was his paternal uncle. There is no amicable relationship between Seshagiri Rao and plaintiff and the

plaintiff completely deserted her husband since 15 years. Seshagiri Rao was suffering from Tuberculosis since long time and he was living with the defendant. Plaintiff is living in her mother's house. She owns considerable landed properties. She was showing reckless attitude towards her husband. Never in her marital life, the plaintiff lived with her husband for a continuous period of six months. There was also exchange of notices between the plaintiff and her husband. Since two years prior to the death of Seshagiri Rao, his health was badly deteriorated. The defendant used to take him to the hospital for treatment and admitted him in T.B. Sanitorium at Hangalagiri and he was there for two months. After recovery from the illness, defendant brought Seshagiri Rao to his house. The plaintiff never cared to see her husband. In the year 1982, defendant shifted his family from Katevaram to Vinukonda on his business work. Along with him, Seshagiri Rao was also taken to Vinukonda. The defendant got him treated in Sajana Nursing Home of Dr. Sambiva Rao. In the hospital, Seshagiri Rao executed a will on 2.3.1983 in a sound and disposing state of mind. While Seshagiri Rao was in Vinukonda, he used to go to defendant's paternal uncle's village Kondayapalem. Doctor advised to take Seshagiri Rao from hospital. Seshagiri Rao expired on 7.3.1983 at Kondayapalem. His dead body was taken to Katevaram in a hired taxi. Plaintiff did not come to see the dead body of her husband even though the defendant sent a word to her. The defendant performed funeral rites of Seshagiri Rao and also performed obsequies. Since 15 years prior to the death of Seshagiri Rao, his lands were in possession of the defendant. Item No. 4 of the plaint schedule property does not belong to Seshagiri Rao and the same belongs to defendant's father. Plaintiff is not entitled to claim the plaint schedule properties. The Government has acquired Ac.0-17 cents in D. No. 304/3B. Plaintiff is also not entitled to claim compensation from the Government.

7. On the strength of these pleadings, the following issues were settled for trial:

1. Whether the plaintiff is entitled to the declaration sought for?
2. Whether the plaintiff is entitled to the injunction sought for?
3. To what relief is the plaintiff entitled?

Further, the following additional issue is also settled:

1. Even if the Court comes to the conclusion that the Will dated 2.3.1983 of late Seshagiri Rao is true, genuine and binding, is the defendant bound to pay the entire income he derives from the will schedule property to the plaintiff as maintenance for her life?

8. Plaintiff examined herself as P.W.1 and Exs.A1 and A2-promissory notes executed by Kadiyala Seshagiri Rao had been marked. On behalf of defendants, D.Ws.1 to 4 were examined and documents Ex.B.1, the alleged Will said to have been executed by Kadiyala Seshagiri Rao in favour of defendant had been marked. The Court of

first instance recorded reasons and came to the conclusion that the said Kadiyala Seshagiri Rao executed Will (Ex.B.1) in a sound disposing state of mind bequeathing all his properties in favour of defendant and there are no suspicious circumstances for recording the will and ultimately dismissed the suit. The appellate Court framed the point for consideration at para 10 and recording its findings commencing from paras 11 to 13 and ultimately allowed the appeal in part, except negating the relief against item No. 4. Aggrieved by the said judgment and decree, the present Second Appeal has been preferred. Since defendant is no more, his legal representatives are prosecuting the present second appeal.

9. The counsel for appellant placed strong reliance on the decision of the apex Court in [Major Singh Vs. Rattan Singh \(Dead\) by LRs. and others](#), wherein the apex Court at para 3 observed as under:

Learned Counsel for the appellant has contended that the High Court could not interfere u/s 100, CPC since the suspicious features of the Will are questions of facts. The trial Court and the appellate Court has considered the suspicious feature and were not inclined to interfere. It is the duty of the propounder of the Will to establish that Will was validly executed removing all the suspicious features satisfying conscience of the Court. In that behalf, the High Court was not justified in interfering in the second appeal as there was no substantial question of law for decision u/s 100, CPC. It is seen that it is an admitted position that Rattan Singh, on coming to know that his brother was unwell, had gone from Calcutta to see him. After his coming, the Will came to be executed and the execution of the Will also was not disputed. The only question is; whether the Will came to be executed in the normal circumstances? The Courts below relied heavily on two suspicious features, namely, the Will was not produced at the earliest point of time, it was produced sometime before the trial. Secondly, the attestators were disbelieved on two grounds, namely, that Hari Singh, one of the attestators had not disclosed that the Will was not executed when the mutation was effected in his presence. The High Court has explained that the mutation was not properly proved and that there was no reason to disbelieve that fact. The High Court had perused the original as well as the photocopy of the Will produced in the trial Court in the first instance. The High Court has found that there is no interpolation in the original Will. Therefore, the rejection of the evidence of the attestator, Hari Singh's evidence was found to be not correct. As regards the other attestator-witness, by name Gurdev Singh, it was disbelieved on the ground that he filed a suit in a litigation against Jeet Singh. It was hardly a ground to disbelieve the evidence of the attestator's evidence. Under these circumstances, when the Courts below had rejected and disbelieved the evidence on the ground that the propounder had not properly discharged his duty, it is the duty of the High Court to consider whether the reasons given by the Courts below were sustainable in law. In view of the above reasoning of the trial Court as affirmed by the appellate Court, necessarily the High Court requires to go into that question to test the reasons. In this perspective, the High Court has rightly gone into that

question and found that the reasons given by the Courts below are flimsy. Thus there is substantial question of law that has arisen for consideration and the High Court has rightly considered the question. We are entirely agree with the High Court.

10. Reliance was also placed in [Pentakota Satyanarayana and Others Vs. Pentakota Seetharatnam and Others](#), wherein it was held that initial onus of proving the execution of will is on the proponent.

11. In [T.D. Gopalan Vs. The Commissioner of Hindu Religious and Charitable Endowments, Madras](#), it was held that uniform practice in the matter of appreciation of evidence has been that if the trial court has given cogent and detailed reasons for not accepting the testimony of a witness, the appellate court in all fairness to it ought to deal with those reasons before proceeding to form a contrary opinion about accepting the testimony which has been rejected by the trial court.

12. Reliance was also placed in [State of Bihar Vs. Radha Krishna Singh and Others](#), wherein the apex Court at para 193 observed as under: "In order to appreciate the evidence of such witnesses, the following principles should be kept in mind:

(1) The relationship or the connection however close it may be, which the witness bears to the persons whose pedigree is sought to be proved by him.

(2) The nature and character of the special means of knowledge through which the witness has come to know about the pedigree.

(3) The interested nature of the witness concerned.

(4) The precaution which must be taken to rule out any false statement made by the witness post litem motam or one which is derived not by means of special knowledge but purely from his imagination, and

(5) The evidence of the witness must be substantially corroborated as far as time and memory admit.

13. The learned Counsel representing the respondent/plaintiff placed strong reliance on the decisions in [Jonnalagadda Ramreddy and Others Vs. Nookala Narasimha Reddy](#), [Irruvuru Ramachandra Reddy @ Chandraiah and Ors. v. Koppala Bhushanam](#) 2006 (6) [Bandi Narsaiah \(died\) and Others Vs. Virabathini Mallesham and Another](#), [Surendra Nath Lahiri Vs. Jnanendra Nath Lahiri](#), [H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others](#), (3) Supreme 504, Taherakhatoun (D) by LRs. v. Salambin Mohammad 1994 (4) ALD 1 (SC) [Smt. Malkani Vs. Jamadar and Others](#), [Kashibai and Another Vs. Parwatibai and Others](#), [Vrindavanibai Sambhaji Mane Vs. Ramachandra Vithal Ganeshkar and others](#), [H.P. Pyarejan Vs. Dasappa \(Dead\) by LRs. and Others](#), and made elaborate submissions pointing that there is no legal infirmity in framing the points for consideration by the appellate Court and

also pointed that several suspicious circumstances had been pointed out by the appellate Court and hence the said findings need not be disturbed in the present second appeal. It is no doubt true that the evidence of D.W.1 is well supported by D.W.2 as well. D.W.1 no doubt deposed about all the facts in detail that Kadiyala Seshagiri Rao executed the Ex.B.1-Will in a sound and disposing state of mind bequeathing all his properties in favour of defendant. One Gavini Gopalakrishna was the scribe of Ex.B.1 and it was attested by one Vakkalagadda Venkateswara Rao (D.W.2) and Gannamaneni Venkaiah (D.W.3). It is their case that Kadiyala Seshagiri Rao gave instructions to the scribe for writing the will. The senior paternal uncle of the defendant by name Ramakotaiah brought the first attester of the will. It is stated that the attestors had seen Kadiyala Seshagiri Rao signing the will and the executant also seen the attestors attesting the will. By recording such reasons, the Court of first instance came to the conclusion that Ex.B.1 was duly proved. But however, the appellate Court recorded certain reasons with regard to appreciation of evidence and also suspicious circumstances. It is for the defendant who is profounder or beneficiary under the will to remove suspicious circumstances surrounding the execution of will. The appellate Court also recorded a reason that on the face of the very execution of will, it is apparent that the defendant was present at the time of execution of will and the same was executed in the hospital itself. It is also the case of defendant that in the presence of Doctor the same was done and the mental condition of Kadiyala Seshagiri Rao was well at the relevant point of time. But however, the Doctor had not certified the same. The contradiction of evidence relating to availability of Doctor in the evidence of D.W.3 and also evidence of D.W.2 had been referred to. The discharge of debts incurred by Seshagiri Rao also had been taken as a strong circumstance to disbelieve the stand taken by the defendant that the plaintiff has deserted the testator by detaching all ties with her husband. The mental condition of Seshagiri Rao from time to time also had been taken into consideration, but there is no best piece of evidence to explain the mental condition of Seshagiri Rao as the Doctor concerned was not examined. It is no doubt true that except the testimony of D.W.1, there is no further evidence available on record. But however, her status as wife of the deceased husband - alleged executant of Ex.B1 being not in serious controversy. This Court is inclined to accept the findings recorded by the appellate Court that Ex.B1 was not duly proved since the same is shrouded with several suspicious circumstances, much had not been explained properly, automatically plaintiff being the sole legal heir of deceased is bound to succeed. Even otherwise, on appreciation of the whole evidence available on record, this Court is satisfied that the appellate Court had taken pains to record the reasons in detail pointing out several suspicious circumstances surrounding Ex.B1 and came to the conclusion that the burden accepted to be discharged by the defendant in relation to Ex.B1 had not been discharged and accordingly allowed the appeal in part. Hence, viewed from any angle, this Second Appeal does not involve any substantial question of law and the same is bound to fail.

14. Accordingly the Second Appeal shall stand dismissed. There shall be no order as to costs.