

CASE NO.:
Appeal (civil) 5007 1990

PETITIONER:
YADALA VENKATA SUBBAMMA

Vs.

RESPONDENT:
YADALLA CHINNA SUBBAIAH (DEAD) BY LRS. & ORS.

DATE OF JUDGMENT: 29/11/2000

BENCH:
S.N.Phukan, V.N.Khare

JUDGMENT:

PHUKAN, J.

This appeal by special leave is directed against the judgment of the Andhra Pradesh High Court passed in Letters Patent Appeal No. 82 of 1982. Appellant who was the original plaintiff has challenged the impugned judgment in this appeal.

Briefly stated the facts are as follows. It will be convenient to refer to the parties in the judgment according to their position in the original suit. One Thummalapenta Nagayya was the owner of the suit property and through his first wife he got a daughter, Subbamma who was married to defendant No.1. After death of his first wife Nagayya married defendant No.4, Polamma and through her he got two daughters, Narayamma and Pitchamma. On 4.6.1927, Nagayya executed a will and shortly thereafter died. In the will it was recorded by him that he wanted to give his daughter, Pitchamma in marriage to his nephew, Yadalla Lakshmaiah and wanted to give all his properties to him, whom he brought to his house two years back from the date of the will. As he could not perform their marriage during his lifetime, the marriage should be performed after his death in his house and all properties except the properties given to his grandson defendant No.3 should go to his daughter Pitchamma and the said Lakshmaiah. He declared that both his daughter and son-in-law shall be entitled to all his outstanding properties and liable for his debts, if any. He stated that his second wife Polamma defendant No.4 should be looked after properly by his daughter and son-in-law. Regarding their daughter Narayamma, he stated that she should be married after attaining proper age and that at the time of marriage she should be given 30 cents of land and further in case his wife Polamma did not wish to reside with his daughter and son-in-law, she would be entitled to be in possession of the house property, then available and shall have life interest in such property and these properties shall devolve upon his daughter and son-in-law after the death of his wife Polamma, defendant No.4. After the death of Nagayya his daughter Pitchamma was married to Lakshmaiah

but she died within about two years of her marriage. Narayanamma the other daughter of Nagayya died soon after the death of Nagayya with the result that all the suit properties came to devolve upon Yadallay Lakshmaiah who married second time who also died soon. Thereafter Lakshmaiah married the plaintiff and died soon after without leaving any issue through the plaintiff.

At the time of death, Lakshmaiah was living with his brothers, defendants herein and after death of Lakshmaiah, plaintiff continued to live with her husbands family until about 1949. Some disputes arose and plaintiff expressed her desire to live separately. There was a panchayat in that connection and a document Exhibit B-1 was executed by which cash, jewellery, etc. were agreed to be given to the plaintiff and another widow of the family by name Yellamma. After few months two other documents were executed namely B-2 and B-3. Exhibit B-2, which was a settlement deed, was executed by defendant Nos. 1 and 2 in favour of the plaintiff. In this deed, arrangement was made by which some properties were given to the plaintiff which were to be reverted back to the family of the defendant Nos. 1 and 2. By Exhibit B-3 executed by the plaintiff, some properties were relinquished in favour of the defendant Nos. 1 and 2. The 4th defendant also wanted to live separately in the house, which was given to her by her husband as per the will. As there were disputes between parties, plaintiff filed the suit for declaration of title and possession of the suit property. The suit was dismissed by the Trial Court. The learned single Judge allowed the first appeal, which was set aside by the impugned judgment. Hence this Appeal.

In this appeal two questions need our consideration namely: (1) Whether there was blending by husband of plaintiff of his separate property which he inherited by virtue of the will with the joint family properties; and (2) Whether by the deed of relinquishment Ex. B-3, the plaintiff relinquished the property inherited by her husband?

The learned single judge in the first appeal gave a clear finding that there was no blending of property which was affirmed by the impugned judgment. We have perused the judgment and we hold that the concurrent finding by the two courts is based on clear evidence. Therefore, we accept the above finding.

Regarding second question, we extract below operative portion from the deed of relinquishment Ex. B-3 executed by the plaintiff, which has been quoted in the impugned judgment:

I hereby relinquish the 1/4th share I have in the properties under the Hindu Womens Rights to Property Act and ...

From the above extracts we have no hesitation to hold that what was relinquished by the plaintiff was the 1/4th share which she had in the joint property under the Hindu Womens Rights Property Act. It is true that in the deed of relinquishment Ex. B-3, mention has been made regarding the property inherited by the husband of the plaintiff but there was no specific relinquishment of the said property. We,

therefore hold that the plaintiff did not relinquish the property inherited by her husband.

We extract below the following portion of the will by which maintenance was provided by the testator for his wife, defendant No.4: If at any future time my wife Polamma is not agreeable to live under the care and protection of Lakshmayya and Pitchamma, she should be given a half share in the movable and immovable properties to be enjoyed by her during her life without any right of alienation and after her life time, the said property given to Polamma, should revert back to my daughter Pitchamma and my son-in-law Lakshmayya.

In the impugned judgment there is a clear finding that when defendant No.4 decided to live separately, she shifted her residence from the joint family and, therefore, it has been held clearly that she acquired title to half share of the property left by her husband as full owner thereof and her title has not been affected in any manner in view of the provisions of the Hindu Succession Act. This is the correct view taken in view of the decision of this Court in Beni Bai versus Raghubir Prasad [(1999) 3 SCC 234].

Thus, we hold that there was no blending of property inherited by the husband of the plaintiff through the will and that plaintiff has not relinquished the said property by the deed of relinquishment Ex. B-3. We also find that defendant No.4 has become full owner in respect of the half share of the suit property. In the result and to adjust the equity, we allow the appeal partly and decree is modified in the following terms: (1) Both the plaintiff and defendant No.4 (now her legal heirs) shall be entitled to half share each of the suit property; and (2) Neither party shall alienate the property or any part thereof by sale mortgage or otherwise without giving first option to the other party.

In the facts and circumstances of the case, parties shall bear their own costs.