

IN THE COURT OF THE SENIOR CIVIL JUDGE:: AT SHADNAGAR

Dated this the 20th day of November, 2018

Present: **Smt. J. KAVITHA**, M.A.LL.M.,(Ph.D),
Senior Civil Judge,
Shadnagar.

A.S.No.01 of 2017

Between:

Karangi Padmamma w/o late Narsireddy, Age 65 yrs, Occ. House hold r/o Rachumallagada, Hamlet of Nagulapally, Farooqnagar mandal.

..Appellant.

And,

1. K. Narayana Reddy s/o K. Narsi Reddy, Age 50 yrs
2. K. Madhava Reddy s/o K. Narsi Reddy, Age 45 yrs
3. Thangalla Kalavathi w/o Venkat Reddy, Age 40 yrs.

All occ:Agril r/o.Nagulaplli village, Farooqnagar Mandal, R3
r/o.Kandivanam village of Farooqnagar Mandal.

.. Respondents

Appeal Under O.41, Rule 1 r/w sec. 96 CPC against the Judgment and decree of the Junior Civil Judge, Shadnagar in OS No.334 of 2006, dated 30-11-2013

Between:-

Karangi Padmamma

..Plaintiff.

And,

1. K. Narayana Reddy s/o K. Narsi Reddy, Age 50 yrs
2. K. Madhava Reddy s/o K. Narsi Reddy, Age 45 yrs
3. Thangalla Kalavathi w/o Venkat Reddy, Age 40 yrs.

..Defendants

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This appeal suit is coming on 20-11-2018 for hearing before me in the presence of Sri K. Vijayadesika Chary, Advocate for the appellant. Sri M.A. Kareem, Advocate for the Respondent No.1. The respondents No.2 and 3 are present in person. And upon perusing the material papers on record and having stood-over for consideration till this day, the court delivered the following:

JUDGMENT

1. This is an appeal suit filed by appellant /plaintiff against the Judgment and Decree passed by Junior Civil Judge Shadnagar in Os.No.334 of 2006 dated 30.11.2016.

2. In this judgment for the sake of convenience the rank of the parties is described according to their position before the trial court in judgment in O.S.No.334 of 2006.

3. Plaintiff filed a suit for partition and separate possession of the suit schedule lands as mentioned in the plaint schedule situated at Nagulapally village of Farooqnagar Mandal into four equal shares and allotment of one such share to plaintiff by metes and bounds and for costs of the suit. The lower court after appraisal of the evidence of Pws.1 to 3 and Exs.A1 to A4 and DWs.1 to 3 and Exs.B1 to B55 answered the issues framed there in and ultimately dismissed the suit by directing both the parties to bear their own costs.

4. The averments of ground of the appeal in brief are that :

(i) The lower court falsely relied on the notarized affidavit alleged to have been executed by the plaintiff and defendant No.3 and the defendants did not take any steps to prove the said document and further the said document is not registered document .

(ii). The lower court did not appreciate the provisions of Hindu Law though it is admitted fact that the suit lands are joint family properties and that the defendants did not prove the oral partition between the parties either in the evidence or through any document.

(iii). The documents under Ex.B1 to B55 are subsequent documents got mutated in the name of the defendants after the death of their father Narsireddy and that Pw.1 led evidence on the aspect of entries in the revenue records but the lower court did not consider the same and falsely observed that since long time the appellant name is not whispered in Exhibit 'B' series document as such it is not considered that the parties are

joint possession of the suit schedule land and falsely found that the suit lands are already partitioned between the parties.

5. The respondents contested the appeal. Either side did not adduce any evidence nor marked any documents in the appeal.

6. Now the point for consideration is that

Whether the appellant /plaintiff is entitled to seek the relief of allowing this appeal by setting aside the judgment and decree of the lower court passed in OS.No.334 of 2006 dated:30.11.2016?

7. Heard both sides and perused the record.

8. The averments of the plaint in brief are that the husband of the plaintiff by name Narsi Reddy died two years prior to filing of the suit as a member of the joint family leaving behind the plaintiff and defendants as his legal heirs. the plaintiff is the wife, the defendants 1 and 2 are the sons and the defendant No.3 is the daughter of late Narsireddy. The suit schedule lands are ancestral lands acquired by late Narsireddy in his family partition along with his sharers. A land to an extent of 3 acres in Sy.No.212 was given to defendant No.3 towards Pasupu Kumkuma with the consent of all the members of joint family in lieu of dowry in the year 2004 which was promised by them at the time of her marriage.

9. That After the demise of late Narsireddy, the plaintiff and defendants are in joint possession and enjoyment of suit schedule lands cultivating the same jointly without any partition irrespective of the entries in revenue records. The defendants 1 and 2 did not co-operate with the plaintiff for the joint enjoyment of the suit schedule lands and also did not provide the maintenance to the plaintiff and neglected to provide minimum food and forced her to live separately. The plaintiff

through mediators approached the defendants 1 and 2 for partition of the suit schedule lands on 22.12.2006 but the defendants did not agree for the same but agreed to provide maintenance. Since the husband of the plaintiff died as a member of a joint family the plaintiff is entitled to get the due share of her husband i.e, 1/4th share in the suit schedule lands. Since the defendant No.3 did not co-operate with the plaintiff, she is made as a party to the suit.

10. The defendants 1 and 2 filed written statement denying most of the averments of the plaint except admitting the relationship between them and also about the suit lands as ancestral properties and the contention of defendants 1 and 2 in the written statement filed jointly is that the suit schedule properties are ancestral properties. An extent of Ac.03-00 gts was given to the defendant No.3 towards her share apart from giving other cash and kind at the time of her marriage.

11. That there was a partition among themselves after the death of Narsireddy two years prior to filing of the suit and that by the time of said partition the marriage of defendant No.3 was performed and she was given 3 acres in Sy.No.212 as agreed by them and the defendants are looking after the welfare of their mother and also deposited Rs.25,000/- in her name for her security in the shape of fixed deposit in Sangameshwara Grameena Bank, Shadnagar Branch vide FDR.No.Vr No.DL/3801 for an amount of Rs.25,000/- and after its maturity the FDR amount is again kept as FDR vide its No.STDR/59976 for an amount of Rs.40,000/- in the same bank and therefore both the plaintiff and defendant No.3 gave consent for the partition of the suit schedule property between the defendants 1 and 2 and accordingly a notary affidavit was executed in the presence of notarized advocate and thereby the plaintiff and defendant No.3 relinquished their rights in the suit schedule properties .

12. That even after the said partition the defendants 1 and 3 by mutual understanding enjoying the suit schedule property jointly without implementing their names in revenue records. On 18.08.2006 the defendants 1 and 2 filed an application before the Mandal revenue officer, Farooqnagar for mutation of their names in revenue records in respect of the suit lands where in the plaintiff and defendant No.3 gave the notarized affidavit raising no objection for implementing the names of defendants 1 and 2 in revenue records. Accordingly Mandal Revenue Officer Shadnagar has issued proceedings vide filed No.B/1413/2006 and effected the names of the defendants 1 and 2 in the revenue records in respect of their shares and also issued pattedar pass books and title deeds in their favour. The plaintiff has not challenged the mutation proceedings.

13. That the defendant No.3 had executed an agreement of sale cum general power of attorney along with possession in favour of one D. Rangaiah son of Maisaiah R/o.Rasumallagudem of Nagulapally on 14.08.2006 through a registered document No.15483/2006 by selling the land of 3 acres which was given to her. The said D. Rangaiah in-turn sold out the said land to one Doddi Chennaiah S/o Mallaiah R/o Tondupally vide registered sale deed No.16342/2006 dated 29.08.2006. The plaintiff has not included the 3 acres of land given to the defendant No.3 and also not made the above said Rangaiah and Chennaiah as parties to the suit. Hence the suit is bad for non-joinder of necessary parties. When once the partition is affected among the family members, again seeking partition is not maintainable. Since there is the hike in the price of the suit lands, the plaintiff and defendant No.3 filed the colluded suit to extract amounts from the defendants 1 and 2. Seeking partial partition is not main table in the eye of law.

14. The defendant No.3 filed her written statement stating that she was given 3 acres of land in Sy.No.212 as Pasupu Kumkuma with the consent of all the members of joint family in lieu of dowry in the year 2004 as promised by them at the time of marriage. She further contended that the plaintiff and defendants are in joint possession and enjoyment of the suit lands by cultivating the same jointly without any partition and that the defendants 1 and 2 did not co-operate with the plaintiff for joint enjoyment of the suit lands and neglected her without providing minimum food and forced her to live separately and that the plaintiff through mediators approached defendants 1 and 2 for partition of the suit lands on 22.12.2006 wherein the defendants 1 and 2 did not agree for partition but agreed to provide maintenance as such the plaintiff is entitled to get 1/4th share in the suit lands.

15. Basing on the averments of the plaint and written statements, the court below framed the issues as follows.

1. Whether the plaintiff is entitled for the partition and separate possession of the suit lands?
2. Whether the prior partition as claimed by the defendant nos.1 and 2 is true?
3. Whether the suit is filed for partial partition and the same is maintainable?
4. Whether the suit is bad for non-joinder of necessary parties?
5. To what relief?

16. The plaintiff examined herself as Pw.1 and marked Ex.A1 to A4 to prove her claim and also examined two independent witnesses as Pws.2 and Pw.3. The defendant No.1 examined as DW.1 and marked Ex.B1 to B55 to disprove the contention of the plaintiff and also examined Dws.2 and 3 on his behalf.

17. The trial court dismissed the suit of the plaintiff on the ground that the plaintiff failed to establish her joint possession and enjoyment over the suit land along with the defendants.

18. The contention of the learned counsel for the appellant/plaintiff is that the court below has erred in appreciating the evidence and other material under Ex.A1 to A4 in proper prospective and thereby dismissed the suit as such the same is liable to set aside.

19. The undisputed fact is that the late Narsireddy died intestate leaving behind him the plaintiff and defendants 1 to 3 as his legal heirs. It is also not disputed that the late Narsireddy acquired the suit lands in Sy.Nos.212,229,257,258 and 259 as his share when divided among his brothers and himself. Ex.A4 filed by the plaintiff ascertained the same and Ex.A1 and A2 show that the suit lands belonged to Narsireddy. It is also an admitted fact that the defendant No.3 was given land to an extent of 3 acres in Sy.No.212 towards Pasupu Kumkuma with consent of all family members in lieu of dowry. It is also an admitted fact that the defendant no.3 executed AGPA in favour of D. Rangaiah s/o. Maisaiah in respect of the 3 acres of land which was given towards her share under Ex.B9 and he sold the same in favour of Doddi Chennaiah S/o Mallaiah under Registered sale deed under Ex.B10. Further Exhibits B51 to B55 show the name of Doddi Chennaiah as the pattedar of 3 acres of land in Sy.No.212/U.

20. The contention of the plaintiff is that her husband late Narsireddy died as a joint family member and she being the wife of Narsireddy is entitled for her husband share in the joint family properties i.e., the suit schedule lands. She is not claiming her right in the suit lands as joint owner and possessor of the suit lands. To show her husband's possession

over the suit lands she relied on Ex.A1, A2 and A4 which clearly show that her husband late Narsireddy got the suit lands along with co-sharers and later the suit lands were mutated in his name of her husband Narsireddy for which there is not dispute.

21. The defendants 1 and 2 contend that after the death of their father Narsireddy in the year 2005, there was a partition between the plaintiff and the defendants in the year 2006 in respect of the suit schedule lands and in the said partition the defendant No.3 who is their sister was given 3 acres of land towards her share as agreed by the family members at the time of her marriage which already took place during the life time of their father Narsireddy. It is further contended by defendants 1 and 2 that the plaintiff who is their mother was given Rs.25,000/- towards fixed deposit in Sangameshwara Bank at Shadnagar branch and thus by receiving their respective shares by way of land and cash the plaintiff and defendant No.3 agreed to forego their rights in the suit lands and accordingly executed a document before DW.3 under Ex.B1 and thereby relinquished their rights in the suit lands. The defendants 1 and 2 say that for some period they both continued joint cultivation by way of mutual agreement and later filed an application before the Tahsildar along with the copy of notarized affidavit executed by the plaintiff and defendant no.3 and on considering the same the MRO issued proceedings by dividing the suit lands equally between the defendants 1 and 2 and also the title deeds and pattedar pass books in respect of their shares were issued to them and that the present suit is filed by plaintiff and defendant No.3 in collusion with each other due to escalatory hike of the price of the suit lands.

22. The defendant No.3 except reiterating the contents of the plaint and also admitting that she was given 3 acres of land towards Pasupu Kumkuma did not specifically say that she is entitled for 1/4th share in the

suit schedule lands but stated that the plaintiff is entitled for 1/4th share which gives the meaning that she is also claiming 1/4th share in the suit lands as such the point is very clear that she is sailing with the plaintiff. She is not examined as witness in this suit and she is silent in her written statement about execution of Ex.B1. The plaintiff by examining herself as Pw.1 stated that apart from D1 and D2, she was also having a son namely Buchireddy who died at his young age and that during his life time he subscribed a chit and as he died, she being his mother got the amount of Rs.25,000/-. She did not produce any oral or documentary evidence to show that her son Buchireddy subscribed a chit and she got the amount on his behalf. Exs.A1,A2 and A4 show that her husband Narsireddy got the suit land along with his sharers and as such the suit lands are the ancestral properties. Ex.A3 which is the ROR for the year 1989-90 show that the suit lands were equally divided between defendants 1 and 2 and therefore defendant 1 and 2 are pattedars and possessors in respect of the suit lands, and succession was granted in favour of D1 and D2 with equal shares vide proceedings No.D/1413/2006 under Ex.B2. Therefore Ex.A1 to A4 are no way helpful to the plaintiff to prove that even after the death of her husband late Narsireddy she along with defendants 1 to 3 were in joint possession of the suit lands and they are enjoying the suit lands jointly. Further Ex.A3 helps the version of the defendants that on their application before Tahsildar along with the copy of Ex.B1, Tahsildar issued proceedings under Ex.B2.

23. During cross examination plaintiff denied her own version of giving 3 acres land of land to defendant no.,3. She gave a different version pertaining to the same. Further she admitted about not producing any document to show that the amount of Rs.25,000/- was acquired by her from her son Late Buchireddy and she also stated that she did not plead

about the same in her plaint. Pw.2 who is examined on behalf of the plaintiff though stated in his chief examination that he is the owner of the adjacent land to the suit lands, later in his cross examination stated that the said land belonged to his maternal uncle and he sold the same. He denied the admitted fact of the parties that 3 acres of land was given to defendant no.3 and also about selling the said land to B. Chennaiah through Rangaiah by defendant no.3. He also denied about the execution of Ex.B1. Pw.3 also pleaded ignorance of giving 3 acres of land to defendant No.3 and about an amount of Rs.25,000/- fixed in the name of the plaintiff. The plaintiff did not take any steps to get Ex.B1 examined by the expert though she denied the execution of Ex.B1. The evidence of Pws.1 to 3 is no way helpful to establish the claim of the plaintiff that as on the date of filing of the suit she along with the defendants are in joint possession of the suit lands. Moreover Pw.1 herself admitted in her cross examination that as on the date of filing of the suit, the suit lands are in the names of D1 and D2.

24. It is further contended by the defendants in the suit that though the plaintiff in her plaint mentioned the 3 acres of land as given to defendant no.3, the said land is not included in this suit as such for the partial partition the suit is not maintainable and also that since the plaintiff agreed the fact that the 3 acres of land was sold to Chennaiah through Rangaiah, they were not made as parties to the suit as such the suit is bad for non- joinder of necessary parties . It is a well settled principle of law that a suit for partial partition is not maintainable subject to certain qualifications. In this case with the consent of all the members of the family a land to an extent of 3 acres was given to defendant No.3 and now the plaintiff excluding the said land and impleading defendant no.3 as a party to the suit is seeking 1/4th share in the suit lands which

means defendant no.3 apart from taking 3 acres of land is also entitled for 1/4th share.

25. Once it is proved that one member of the joint family has separated from others, there is no presumption that the rest continued to live jointly. The privy council has observed in **Balabu vs Rukma Bai (1903) 30 IA.130'** there is no presumption when one co-parcenor separates from the others, then later remain united. An agreement amongst the remaining members of the joint family to remain united or to re united must be proved like any other fact.

26. By exhibiting Ex.B1 which bears the signatures of the plaintiff and defendant no.3 the defendants 1 and 2 proved that after giving 3 acres of land to defendant no.3 and depositing Rs.25,000/- on the name of the plaintiff, the plaintiff and defendant no.3 severed themselves and therefore the joint status came to an end. By producing Ex.B1, the defendants shifted their burden on the plaintiff but the plaintiff did not take any steps to disprove the version of the defendants 1 and 2. She also has not filed any objections before the Tahsildar while getting the names of defendant no.1 and 2 mutated in the revenue records. DW.2 supported version of defendants 1 and 2 stating that in a panchayath held in presence of elders both the plaintiff and defendant renunciated their rights in the joint family properties and executed Ex.B1 and basing on the same the revenue authorities have implemented the names of defendants 1 and 2 in the revenue records. During cross examination also his evidence remains unchallenged. The important witness in this case is DW.3 who deposed about the execution of Ex.B1. It is his evidence that on 18.08.2006 both the parties to the suit file an affidavit before him relinquishing their rights in favour of D1 and D2. During cross examination he admitted that the stamp paper used for drafting the

notary affidavit was purchased in the name of Narayan Reddy (DW.1). The exhibits filed by the defendants 1 and 2 under Exs.B3 to B55 clearly show that defendants 1 and 2 are the pattedars and possessors of their respective shares in the suit lands and also about the land of 3 acres sold in the name of D. Chennaiah.

27. The lower court has assigned valid reasons in detail in answering the issues framed there in. Therefore, I see no reasons to interfere with the findings of the lower court. The court below rightly held that the plaintiff failed to establish her claim in proving her joint possession and enjoyment over the suit lands along with the defendants and non of the documents filed by the plaintiff reveal the joint possession and enjoyment of the suit lands. Accordingly I hold that appellant is not entitled to seek the relief as prayed for.

28. In result, the appeal suit is here by dismissed without costs by confirming the judgment and decree passed by the Junior Civil Judge, Shadnagar in O.S.No.334 of 2006 dated.30.11.2006.

Typed to my direct dictation, corrected and pronounced by me in the Open Court on this the 20th day of November, 2018.

Senior Civil Judge,
Shadnagar.

No evidence adduced and no documents marked in appeal on behalf of both parties.

Senior Civil Judge,
Shadnagar.