

IN THE COURT OF VIII ADDITIONAL DISTRICT JUDGE AT MIRYALGUDA

PRESENT: SRI B.S.JAG JEEVAN KUMAR, B.Sc., LL.M.,
VIII ADDITIONAL DISTRICT JUDGE

Saturday, September 7, 2019

CMA NO.1 OF 2018
[Against order dated 4.10.2017 of the Court of Senior Civil Judge,
Miryalguda in IA No.369 of 2015 in OS No.122 of 2015]

BETWEEN:

Khairun Bee

... Appellant/Petitioner

AND

- 1) Abdul Ashraff Azeez
- 2) Mohd. Abeda Begum
- 3) Abdul Sattar
- 4) Shaik Ghousi Begum
- 5) Shaik Beebi
- 6) Shaik Jubeda
- 7) Thaslima Sulthana Begum
- 8) Mohd. Ghouse
- 9) Mohd. Khadir
- 10) Mohd. Bari
- 11) Mohd. Raheem
- 12) Mohd. Mannan
- 13) Khairun Bee
- 14) District Registrar, Nalgonda

... Respondents/Respondents

Counsel for Petitioner	: Sri Y.Chandrasekhar Reddy, Advocate, Miryalguda
Counsel for Respondent Nos.7 to 12	: Sri Palreddy Ramana Reddy, Advocate, Miryalguda
Counsel for Respondent No.14	: Sri G.Srinivas Reddy, Government Pleader

This appeal coming on 13.8.2019 for final hearing; upon hearing the counsel on record and considering the material on record and having stood over for consideration till this day, this Court has made the following:

ORDER

In the suit filed for partition of the lands mentioned in the plaint schedule, hereinafter called as "suit lands", the appellant filed IA No.369 of 2015 for grant of temporary injunction restraining respondent Nos.7 to 12 from alienating the suit lands.

2. Admittedly, the suit lands belonged to Mohd. Khasim. Mohd. Khasim died. Mohd. Aziz, Mohd. Janimiya and respondent Nos.11 and 12 are the sons and respondent No.13 is the daughter of Mohd. Khasim. Mohd. Aziz and Mohd. Janimiya died. The appellant is the wife of Mohd. Aziz. Abdul Gaffar and respondent No.3 are sons and respondent Nos.2 and 4 to 6 are the daughters of Mohd. Aziz and the appellant. Abdul Gaffar is not alive and respondent No.1 is the son of Abdul Gaffar. Respondent No.7 is the daughter and respondent Nos.8 to 10 are the sons of Mohd. Janimiya.

3. The case of the appellant is that Mohd. Khasim died in the year 1986. After the death of Mohd. Khasim, the heirs of Mohd. Khasim became joint owners of the suit lands and pouthi was implemented in their names in the amendment register for the year 1998-99. The suit lands were not partitioned. In February 2015 and in subsequent months, she demanded for partition of the suit lands but respondent Nos.7 to 12 bluntly refused partition and tried to alienate the suit lands. Therefore, she filed the suit and the said IA No.369 of 2015.

4. The appellant, to prove her case, filed xerox copy of the amendment register for the year 1998-99, true copy of pahani for the year 2009-10 and Mee Seva pahanies for 1424 Fasli, Exs.P1, P3 and P4.

5. The contesting respondents denied the case of the appellant and pleaded:

"14. ... during his lifetime, said Mohammed Khasim allotted the lands to his heirs for their respective shares.

15. It is further submitted that since then the sons and daughter are cultivating their respective lands with metes and bounds and the said Mohammed Khasim during his lifetime provided all amenities to his sons and daughter and they are enjoying their respective shares by cultivating the lands by ascertaining their ownership rights by paying the necessary charges to the Government. Subsequently, the said Mohammed Khasim was died in the year 1977. After the death of the said Mohammed Khasim, the plaintiff and the defendant Nos.17 to 13 are enjoying their respective shares without any interruption from any corner.

16. It is further submitted that in the year 1998-99 the plaintiff and the defendant Nos.7 to 13 altogether approached the revenue authorities for mutation their names in their respective shares on the mutual understanding of the family members, as per allotment of their shares by late Mohammed Khasim approached the revenue officials and made an application to mutate their names as pattadar and possessor column of their respective shares by mutual consent of the family members. On the said circumstances, the revenue officials also made due enquiry and came to a conclusion that the family members partitioned long back and enjoying their respective shares with metes and bounds, as such, the revenue authorities amended the register as per partition and separate possession of

the plaintiff and the defendants. Subsequently, the revenue authorities got issued a pattadar pass books and title deeds in their respective shares allotted in their family partition.

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18. It is further submitted that the plaintiff herein was admitted before the Revenue Divisional Officer, Miryalguda that partition was effected between the family members vide ROR Appeal No.E1/2368/2012. That once the plaintiff admitted the partition between the family members and approached the revenue authorities and mutated as per entitlement of their respective shares in the relevant records. The said ROR Appeal is also pending for consideration before the Revenue Divisional Office, Miryalguda.

19. It is further submitted that the plaintiff and the defendant Nos.7 to 13 also got pattadar pass books and title deeds from the revenue officials in the year 1999-2000 to their respective shares. That the defendant No.1 herein also admitted that the partition was effected between the family members and the same was got mutated respective shares in the relevant records, in that due course the defendant No.1 father i.e., plaintiff's husband was died, as such, the share of the father of the defendant No.1 was mutated in the name of the plaintiff.

20. It is further submitted that the defendant No.1 filed the partition suit before the VIII Additional District Judge's Court at Miryalguda against the plaintiff herein and the defendant Nos.2 to 6 vide OS No.20 of 2015 and also filed an Interlocutory Application

No.508/2015 seeking the relief of ad interim injunctin order of not to alienate, gift or transfer etc., and the said order is in force and the plaintiff also engaged counsel in that suit.

21. It is further submitted that the plaintiff herein also alone sold nearly Ac.3.00 gts., of land, which is shown in the suit schedule property in favour of the different persons since 2005 to till today, which was allotted to her family share as shown below:

Sl. No.	Document No.	Date of document	Sy. No.	Extent	Purchaser name
1	1187/2005	20.6.2005	305	300 sq.yds.	Vatte Yedukondalu
2	316/2007	29.1.2007	305	121 sq.yds.	Pathanaboina Laxmamma
3	291/2007	27.1.2007	305	204 ½ sq.yds.	Nenavath Yedukondalu
4	427/2007	5.2.2007	305, 297	173 ½ and 91 sq. yds.	Mannem Sowjanya
5	317/2007	29.1.2007	305	121 sq.yds.	Pathanaboina Padma
6	292/2007	27.1.2007	305	204 ½ sq. yds.	Sapavath Hanumanthu
7	426/2007	5.2.2007	305	78 sq.yds.	Boddupalli Venkata Chary
8	939/2011	15.4.2011	305	169 sq.yds.	Abeda Begum
9	940/2011	15.4.2011	305	150 sq.yds.	Damerla Lalitha
10	938/2011	15.4.2011	100	Ac.1.00	Shaik Aleem
11	1001/2011	20.4.2011	305	121 sq.yds	Pathanaboina Nirmala
12	330/2012	28.1.2012	306	302 ½ sq.yds.	Shaik Jubeda
13	333/2012	28.1.2012	100	Ac.1.00	Shaik Gousiya
14	331/2012	28.1.2012	306	423 ½ sq.yds.	Shaik Beebi
15	332/2012	28.1.2012	305, 306	151 ¼, 151 ¼ sq.yds.	Shaik Gousiya

It is crystal and clearly shows that the partition was effected between the family members and the same was mutated in their respective shares in the revenue records. The above said all the transactions executed by the plaintiff before the Sub-Registrar, Nidamanoor for a valuable consideration and got registered in their favour as shown above. That the plaintiff shown the defendant No.13 as proforma party in the suit proceedings, it is clearly shown

that both are the collusion each other and permitted to alienate the defendant No.13 properties.”

The contesting respondents filed their pattadar pass books and title deeds and pattadar pass book and title deed of respondent No.13, Exs.R1 to R12, and xerox copies of the registered sale deeds executed by the appellant, Exs.R13 to R27.

6. The Court below, on appreciating the evidence on record, dismissed the said IA No.369 of 2015 vide its order dated 4.10.2017 observing: “... If really the partition was not taken place how the petitioner alone sold the nearly Ac.3.00 acres of land to the purchasers without taking permission or consent from their shareholder, it’s reveals that basing on the Ex.R1 document the petitioner was allotted her share, out of her share she sold the nearly Ac.3.00 acres of land to the different persons in Sy. No.305, 306, 100 and 297 and it is also not case of the petitioner is that the said land were her personal properties, she never disclosed the said fact any whether either in the plaint or in the petition. After filing of the counter also, the petitioner did not dispute the selling of lands by her in favour of purchasers. So, even though there is no registered partition deed among the parties. But already, the petitioner was gave share out of that only she sold nearly Ac.3.00 acres of land to the purchasers. So, now the petitioner cannot claim that the respondents R7 to R12 tried to alienate the petition schedule properties. If the respondents 7 to 12 have to right to sell the petition schedule properties, how the petitioner sold the Ac.3.00 acres of land out of this petition schedule survey numbers to the purchasers. So, the prima facie it is not in favour of the petitioner. It is also an admitted fact that the petitioner shown the respondent No.13, but the petitioner did not show any share to R13 who is no other than the daughter of Khasim. For that the petitioner contention is that already R13 gives share in Ex.R1 document. So, that she did not mention any share to R13. If that document is relied by the petitioner, it also applied to the

petitioner in respect of her share.”

7. The counsel for the appellant submitted that pouthi, Ex.P1, only shows that the names of the legal heirs of Mohd. Khasim were mutated in the revenue record. No partition was effected as contended by the contesting respondents. The Court below erred in appreciating the evidence on record and dismissing the said IA No.369 of 2015.

8. Per contra, the counsel for the contesting respondents submitted that partition was effected and the revenue authorities mutated their names in the revenue record as per the partition, that the appellant sold some of the properties in her possession and, therefore, the Court below committed no error in passing the impugned order.

9. The point for determination is: whether the appellant established prima facie case, balance of convenience and irreparable loss in her favour and whether the order of the Court below is liable to be interfered with?

10. No record was filed by the contesting respondents to show that Mohd. Khasim during his lifetime partitioned the properties and allotted the lands to his sons and daughter as per their shares as pleaded by them.

11. Pouthi, Ex.P1, relied on by the contesting respondents, would only show that mutation was effected based on the statements of the applicants. Based on Ex.P1, entries were made in the pahanies and pattadar pass books and title deeds were issued to the parties.

12. In Sawarni vs. Inder Kaur (1996) 6 SCC 223, the Hon’ble Supreme Court held: "7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the

person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

13. In view of the said decision, the plea of partition raised by the contesting respondents based on revenue record cannot be accepted.

14. The appellant is not disputing the sales under Exs.R13 to R27. The counsel for the appellant submitted that the appellant sold the properties for maintaining her family and for performing marriages of her children and the said alienations can be computed in the share of the appellant at the time of passing of preliminary decree.

15. It is true, the appellant sold some of the suit lands but from this, one cannot conclude that there was partition as pleaded by the contesting respondents.

16. The appellant submitted that the contesting respondents tried to alienate the suit lands. The suit is for partition. If the suit lands are alienated pending disposal of the suit, the appellant will suffer irreparable loss.

17. For the foregoing reasons, the point is answered in favour of the appellant and against the contesting respondents and consequently, the appeal is allowed and the contesting respondents are restrained by way of temporary injunction from alienating the suit lands.

Prepared and pronounced by me in the open Court on this the 6th day of September 2019.

VIII ADDITIONAL DISTRICT JUDGE

APPENDIX OF EVIDENCE

Nil

JUDGE