

IN THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE
RANGA REDDY DISTRICT AT L.B.NAGAR

PRESENT: S.Sasidhar Reddy,
Principal District Judge,
Ranga Reddy District.

Wednesday, the 8th day of January, 2025.

A.S.Nos.107 and 108 of 2023

Between:

A.S.No.107/2023:

Nagapuri Indra Chary, S/o.late Malla Chary,
Aged 54 years, Occ: Business, R/o.H.No.4-89,
Nadargul Village, Balapur Mandal, Ranga Reddy District.

... Appellant/Defendant No.1

AND

1. Nagapuri Chandra Chary, S/o.late Malla Chary,
Aged 64 years, Occ: Business,
R/o.H.No.2-123, Gurramguda Village,
Balapur Mandal, Ranga Reddy District.

... Respondent/Plaintiff

2. Nagapuri Narsimha Chary, S/o.late Malla Chary,
Aged 66 years, Occ: Business,
R/o.H.No.11-3-89, Mohammedguda,
Secunderabad.

... Respondent/Defendant No.2

Appeals against the Judgment and Decree dated 19.01.2023 passed
by the learned II Additional Senior Civil Judge, Ranga Reddy District at
L.B.Nagar , in;

O.S.No.873/2014

Between:

Nagapuri Chandra Chary, S/o.late Malla Chary,
Aged 64 years, Occ: Business,
R/o.H.No.2-123, Gurramguda Village,
Balapur Mandal, Ranga Reddy District.

... Plaintiff

AND

1. Nagapuri Indra Chary, S/o.late Malla Chary,
Aged 54 years, Occ: Business, R/o.H.No.4-89,
Nadargul Village, Balapur Mandal, Ranga Reddy District.

2. Nagapuri Narsimha Chary, S/o.late Malla Chary,
Aged 66 years, Occ: Business,
R/o.H.No.11-3-89, Mohammedguda,
Secunderabad.

... Defendants

A.S.No.108/2023:

Nagapuri Indra Chary, S/o.late Malla Chary,
Aged 54 years, Occ: Business, R/o.H.No.4-89,
Nadargul Village, Balapur Mandal, Ranga Reddy District.

... Appellant/Plaintiff

AND

Nagapuri Chandra Chary, S/o.late Malla Chary,
Aged 64 years, Occ: Business,
R/o.H.No.2-123, Gurramguda Village,
Balapur Mandal, Ranga Reddy District.

... Respondent/Defendant

Appeals against the Judgment and Decree dated 19.01.2023 passed by the learned II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar , in;

O.S.No.723/2016

Between:

Nagapuri Indra Chary, S/o.late Malla Chary,
Aged 54 years, Occ: Business, R/o.H.No.4-89,
Nadargul Village, Balapur Mandal, Ranga Reddy District.

... Plaintiff

AND

Nagapuri Chandra Chary, S/o.late Malla Chary,
Aged 64 years, Occ: Business,
R/o.H.No.2-123, Gurramguda Village,
Balapur Mandal, Ranga Reddy District.

... Defendant

These appeals came up before me for final hearing in the presence of Sri K.Rajender Reddy, counsel for appellant and Sri K.Raj Reddy, counsel for respondent No.1 in both appeals, respondent No.2 in A.S.No.107/2023 set exparte, upon hearing both sides and on perusing the material on record and the matter having stood over for consideration till this day, this court passed the following:

COMMON JUDGMENT

1. These appeals are filed against the Common Judgment in O.S.No.873/2014 and O.S.No.723/2016 dated 19.01.2023 on the file of II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

2. The facts of the case are that the 1st respondent filed O.S.No.873/2014 seeking partition and separate possession of his 1/3rd share in the suit schedule property. The appellant filed O.S.No.723/2016 against the 1st respondent seeking perpetual injunction.

3. The admitted case of both parties is that the suit schedule property belongs to the late father of the appellant and respondents. The 1st respondent filed O.S.No.873/2014 claiming that their late father had acquired the suit schedule property and he is entitled to 1/3rd share in the said property and the appellant and 2nd respondent are denying his share.

4. The appellant took the stand that the suit schedule property was given to him as part of a family settlement and their mother had executed a deed on a 100 rupees non-judicial stamp paper allotting the suit schedule property to him. He further contended that their father had executed a gift deed in favour of 2nd respondent as part of the settlement and the 1st respondent was allocated a property in Gurramguda where he is currently residing, apart from certain amount of cash and gold. The appellant further contended that he had demolished the old structure on the suit schedule property and had constructed a new structure after taking permission from the Gram Panchayath and also obtained a loan from the Gram Panchayath and he is in possession of the property.

5. The appellant also filed O.S.No.723/2016 contending that he is in possession of the suit schedule property and the 1st respondent is trying to interfere into his possession.

6. Before the trial court, the following issues were framed in both the suits:-

O.S.No.873/2014:

- 1) Whether the suit schedule property is available for partition?
- 2) Whether the plaintiff is entitled for partition of the suit schedule property into three equal shares and for allotment of 1/3rd share to the plaintiff and for separate possession against the defendants as prayed for?
- 3) To what relief?

O.S.No.723/2016:

- 1) Whether the plaintiff is in possession and enjoyment of the suit schedule property?
- 2) Whether the plaintiff is entitled for perpetual injunction as prayed for?
- 3) To what relief?

7. Joint trial was conducted and the evidence was recorded in O.S.No.873/2014 and the 1st respondent examined himself as PW1 and marked Exs.A1 and A2. The appellant examined DWs.1 to 7. The Trial court decreed O.S.No.873/2014 and dismissed O.S.No.723/2016 by a common judgment. Aggrieved by the judgment and decrees the appellant filed the present appeals. Since the appeals are against a common judgment they are being disposed by a common judgment.

8. Before the appellate court the appellant filed I.A.No.1143/2024 under Order XLI Rule 27 of Code of Civil Procedure, 1908 for filing

additional documents contending that before the suits were tried together, the evidence of the appellant had commenced in O.S.No.723/2016 and he had examined himself as PW1 and marked Exs.A1 to A9. That the trial court did not consider those documents and therefore, the documents are being filed in the present appeal.

9. Heard learned counsel for appellant. Heard learned counsel for respondent No.1.

10. Learned counsel for the appellant contended that there was a family settlement among the appellant and the respondents and their mother had executed a deed conveying the property in favour of the appellant. Learned counsel contended that the trial court did not consider the documents that were marked in favour of the appellant in O.S.No.723/2016. That documents that are now filed in the appeal clearly establish that their father had executed a registered gift deed conveying a property in favour of the 2nd respondent and further the appellant is in possession of the suit schedule property and had made construction thereon. Thus, the appellant had established the settlement between the family members and the possession of the appellant over the suit schedule property.

11. Learned counsel for the 1st respondent contended that the suit schedule property is admittedly purchased by the father of the appellant and respondents No.1 & 2 and consequently, the 1st respondent is entitled to a share in the property. Learned counsel further contended that the

alleged settlement is not proved by any of the documents and thus, there is no error in the findings of the trial court.

12. Upon considering the material on record and on hearing the learned counsel for appellant and learned counsel for 1st respondent, the points for consideration are:-

- 1) Whether the 1st respondent is entitled for the relief of partition?
- 2) Whether the appellant is in exclusive possession of the suit schedule property?
- 3) Whether the appellant is entitled for the relief of perpetual injunction against the 1st respondent?
- 4) To what relief?

13. **POINTS No.1 to 3** It is the admitted case of the 1st respondent that the suit schedule property belonged to their father. The 1st respondent in his written statement filed in O.S.No.873/2014 admitted that the suit schedule property belonged to their father. Subsequently he took the plea that the property was acquired by their mother. However, in the course of evidence, DW2, who was the son of the vendor of the suit schedule property, admitted that the property was purchased in the name of the father of the appellant and respondents. Further, it is to be noted that there is no specific plea that the suit schedule property was acquired by the mother of the appellant and the respondents. Only a vague plea

was taken that their mother had executed a deed allocating the suit schedule property to the appellant. The trial court rightly noted that the capacity in which their mother had executed the deed has to be considered. In this regard, it is also to be noted that the said deed has not been filed before the trial court or before the appellate court.

14. Be that as it may, when the appellant claims that their mother had title to the property and their mother had allocated it to the appellant as a part of the family settlement, the burden is on the appellant to establish that the property belong to their mother and she had conveyed it to him. No evidence is filed by the appellant in support of such claim. The appellant examined several witnesses to support his claim, but no document was filed before the trial court to show that their mother had purchased the property from the father of DW2. Admittedly, the property remains in the name of their late father. In such event, in the absence of any evidence to show that their mother had title to the property, it has to be held that the property belonged to the late father of appellant and respondents. In this regard, it is also to be noted that the evidence adduced by the appellant is contrary to the plea he had taken in his written statement. There is no specific plea about the details of the settlement between the appellant and the respondents nor is there any evidence to support the claim of the appellant that the property was acquired by their mother and was conveyed to the appellant.

15. In so far as the documents that are filed now are concerned, admittedly, they have been filed by the appellant before the trial court, but the same were not considered by the trial court. The trial court noted that though the appellant had marked those documents in O.S.No.723/2016, he did not make any effort to bring them on record in O.S.No.873/2014. This cannot be accepted, since the documents were already on record in the suit that was on the file of the trial court and which has been filed along with O.S.No.873/2014. Therefore, the documents ought to have been taken on file. The documents filed with I.A.No.1143/2024 are taken on file.

16. Even if the said documents are considered, all they show is that their late father had acquired the property that was gifted to the 2nd respondent. There is no whisper about any family settlement in the said documents.

17. In so far as the documents showing possession of the appellant are concerned, the 1st respondent did not dispute that the appellant was in possession of the property. The case of the 1st respondent is that the property was acquired by their late father and consequently, he has a share in the same. Since it is held above that the property was acquired by their late father and it is also admitted that their late father died intestate, the possession of the appellant over the suit schedule property is not his exclusive possession and he is in possession as joint owner

along with the respondents. Hence, there is no error in the finding of the trial court that the appellant is not entitled for injunction.

18. In the circumstances, the claim of appellant fails and there is no error in the findings of the trial court in granting partition in O.S.No.873/2014 and refusing injunction in O.S.No.723/2016.

19. **POINT No.4:** In the result, AS No.107/2023 and AS No.108/2023 are dismissed with costs confirming the Common Judgment and Decrees dated 19.01.2023 in O.S.No.873/2014 & O.S.No.723/2016 passed by the II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

I.A.No.1143/2024 is allowed.

Dictated to the Stenographer, transcribed and typed by her, corrected and pronounced by me in the open court on this the 8th day of January, 2025.

**PRINCIPAL DISTRICT JUDGE
RANGA REDDY DISTRICT**

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

NONE

EXHIBITS MARKED

For appellant:

Ex.B1 - C.C of Gift Deed Doc.No.1597/2004

Ex.B2 - Demand Notice issued by Badangpet Municipality dt.08.12.2014

Ex.B3 - Demand Notice issued by Badangpet Municipality for 2015-16

Ex.B4 - Demand Notice issued by Badangpet Municipality for 2016-17

Ex.B5 - Demand Notice issued by Badangpet Municipality for 2017-18

Ex.B6 - Demand Notice issued by Badangpet Municipality for 2018-19

Ex.B7 - No Due Certificate of property tax dt.10.03.2024

Ex.B8 - Water Bill Summary dt.10.03.2024

Ex.B9 - Electricity Bill dt.05.02.2024

Ex.B10- Electricity Bill dt.05.03.2024

Ex.B11- Photograph dt.08.12.2012

On behalf of Respondents: NIL

**PRINCIPAL DISTRICT JUDGE
RANGA REDDY DISTRICT**