2014 INSC 665

ITEM No. 1B Court No. 3 SECTION XIIA
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3632 of 2008

N.PADMAMMA AND ORS. Appellant(s)

VERSUS

S.RAMAKRISHNA REDDY AND ORS. Respondent(s)

Date : 23/09/2014 This appeal was called on for judgment today.

For Appellant(s) Mr.Shridhar Potaraju, Adv.

For Respondent(s) MS. D.Bharathi Reddy, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Hon'ble Mr. Justice T.S.Thakur pronounced Judgment of the Bench comprising His lordship, Hon'ble Mr. Justice C.Nagappan and Hon'ble Mr. Justice Adarsh Kumar Goel.

Leave granted

The appeal is allowed in terms of the signed reportable judgment.

(Shashi Sareen) (Veena Khera)
Court Master Court Master

(Signed reportable judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3632 OF 2008

N. Padmamma & Ors. …Appellants

Versus

S. Ramakrishna Reddy & Ors. …Respondents

J U D G M E N T

T.S. THAKUR, J.

1. This appeal has been placed before this larger bench pursuant to a reference made by a Division Bench of this Court comprising S.B. Sinha and Lokeshwar Singh Panta, JJ. The reference Order reported in ***N. Padmamma and Ors. v. S. Ramakrishna Reddy and Ors. (2008) 15 SCC 517*** formulates the following question for determination:

> *"Whether the civil court has jurisdiction to entertain a suit for partition for division of respective shares amongst the members of a joint family, when in respect of some of the lands, occupancy right has been granted in favour of one of them in terms of the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short "the Act") is the question involved herein."*

2. We may before adverting to the precise question and the rival contentions urged before us, briefly recapitulate the facts:

3. S. Ramakrishna Reddy original owner was survived by his sons, namely, S. Ramachandra Reddy and S. Anantharam Reddy. The former passed away in the year 1968 leaving behind two wives, two daughters and a son. In this appeal the two wives and their children are pitted against each other. While the appellants-plaintiffs in this appeal are the first wife and her daughter, the defendants-respondents are the son, second wife and the daughter left behind by the deceased.

4, Civil Suit No.933 of 1981 filed by the plaintiffs (appellants herein) before the II Additional Judge, City Civil Court, Hyderabad, sought a decree for partition of the property left behind by S.Ramachandra Reddy by metes and bounds. The plaint *inter alia*, stated that Ramchandra Reddy and his brother late Anantharam Reddy had acquired several items of immovable properties including agricultural land admeasuring 26 acres, 37 guntas, residential house bearing M.C.H No.2-2-977 and Mulgi M.C.H. No.2-2-1010 situate at Bagh Amberpet, Musheerabad Taluka of Hyderabad district. In the partition between the two brothers, the suit schedule properties fell to the share of

Ramachandra Reddy. The plaintiff's case was that after the death of Ramachandra Reddy, the parties continued to jointly own and possess the properties in dispute and being self-acquired property of Ramachandra Reddy, each one of the five heirs were entitled to 1/5th share in the same.

5. The suit was contested by the defendants-respondents, *inter alia*, alleging that agricultural lands covered by Surveys No. 21 to 28 were inams lands which were acquired by the grandfather of defendant-respondent no.1 and enjoyed by him as holder by paying land revenue. It was further alleged that upon a partition between late Shri Anantharam Reddy and S. Ramakrishan Reddy that took place in the year 1960 land underlying Survey Nos.21-28 and house bearing M.C.H No.2-2-977 and Mulgi M.C.H. No.2-2-1010 situate at Bagh Amberpet, Musheerabad Taluka of Hyderabad district was allotted in favour of Ramchandra Reddy after whose death defendant no.1 came in possession of the said properties. Defendant no.1 also claimed to have constructed a new house after demolition of the old. Besides, he acquired occupancy rights in respect of Survey Nos.21-28 under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 mentioned earlier.

The defendant’s case, therefore, was that he had by reason of the grant of occupancy rights in his favour become the absolute owner and occupant of the inams lands underlying Survey Nos.21-28 in which the plaintiffs could claim no share. It was also alleged that agricultural land covered by Survey Nos.282/1, 283/1, 283/2, 283/3, and 284 measuring 5 acres and 16 guntas was purchased to the extent of 1/2 by defendant no.1 with the help of money which defendant no.1's grandmother had provided for that purpose. Defendant no.1 was, therefore, the absolute owner of the said property comprising items 9-13 of plaint 'A' schedule.

6. The Trial Court framed as many as six issues and by its judgment and order dated 24th April, 1989 decreed the suit in part. The Trial Court held that defendant no.1 was the absolute owner of property covered by Survey Nos.21-28 mentioned above but had failed to establish that he was the absolute owner of the property covered by item 9-14 on the basis of the instrument of sale in his favour. The said properties were held by the Trial Court to be joint family properties partitioned. The Trial Court further held that the plaintiffs-appellants were entitled to $1/5^{th}$ share only in Schedule 'B' and 'C' properties.

7. Aggrieved by the judgment and order passed by the Trial Court the respondents filed C.C.C. Appeal No.94 of 1989 to which the appellants filed cross-objections. The appeal and the cross-objections were both heard and disposed of by a Single Judge of the High Court with the modification that the plaintiffs will be entitled to 3/8th share in the property held jointly among the parties. The claim for allotment of a share in the inam lands over which defendant no.1 had acquired occupancy rights was held untenable as the grant of such occupancy rights was in favour of defendant no.1 in his individual capacity and not as a member of the joint family. The Single Judge observed:

> *"In view of the decision of the Supreme Court in Laxman Ambaji's case referred to above, I agree with the contention of the leaned counsel for the appellant/1st defendant that in so far as sec. 8 of the Act, the date of vesting should taken as 1-11-1073 and since the first defendant is registered as an occupant of the land, he does so in his individual capacity and not as a member of the joint family and so, the lower court is right in dismissing the plaintiff's claim as regards these items of property."*

8. The matter was then brought up before a Division Bench of the High Court in Letters Patent Appeal No.3 of 1993 filed by the appellants which appeal also failed and was dismissed by the Division Bench in terms of its order dated 11th August, 2006. The Division Bench of the High Court affirmed the finding recorded

by the Trial Court and the Single Judge that defendant no.1 (respondent herein) had failed to prove the alleged relinquishment by the plaintiffs of their share in items 7 and 8 of plaint 'A' schedule property and plaint 'B' and 'C' properties. As regards items 9 to 14 of plaint ‘A' Schedule property also the Division Bench affirmed the findings of the Courts below that defendant no.1 was not the absolute owner of the property even when the same had been purchased in his name as the sale consideration came from out of the joint family funds. Defendant No.1 was, in any case, a minor who had no income of his own. The story that his grandmother had contributed money for the purchase of said items of property was disbelieved by all the three Courts and the claim of exclusive ownership over the said property rejected. More importantly, the Division Bench while affirming the view taken by the Single Judge held that the grant of occupancy rights in favour of defendant no.1 was in his individual capacity as the occupant of the land in question.

9. While we have given the factual contours of the case in the above paragraphs, we must make it clear that none of the findings recorded by the Courts below are under challenge before us except the ones that relate to the question whether

grant of occupancy rights in favour of respondent No.1 was in his individual capacity to the exclusion of the other members of the family so as to deny to the plaintiffs-appellants their share in the said property. For a proper determination of that question, it is necessary to extract Sections 3, 8, 10, 24 and 29 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 that came into force on 20th July, 1955, which are as under:

> *"**3.** Abolition and vesting of inams and the consequences thereof.—(1) Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant, sanad, order or other instrument, Act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil, Revenue or Atiyat Court, and with effect from the date of .vesting, all inams shall be deemed to have been abolished and shall vest in the State.*
>
> *(2) Save as expressly provided by or under the provisions of this Act and with effect from the date of vesting the following consequences shall ensue, namely:*
>
> *(a)* * * *
>
> *(b) all rights, title and interest vesting in the inamdar, kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant in respect of the inam land, other than the interest expressly saved by or under provisions of this Act and including those in all communal lands, cultivated and uncultivated lands (whether assessed or not), waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries shall cease and be vested absolutely in the State free from all encumbrances;*
>
> *(c)-(f)* * * *
>
> *(g) the inamdar and any other person whose rights have*

vested in the State under clause (b) shall be entitled only to compensation from the Government as provided for in this Act;

(h) the relationship with regard to inam land as between the inamdar and kabiz-e-kadim, permanent tenant, protected tenant or non-protected tenant shall be extinguished;

*(i) * * **

*(3) * * **

***8.** Registration of non-protected tenant as occupant.—(1) Every non-protected tenant shall, with effect from the date of vesting subject to Section 37 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (21 of 1950) be entitled to be registered as an occupant of such inam lands in his possession as may be left over after the allotment under Section 4 which, immediately before the date of vesting were under his personal cultivation and which together with any lands he separately owns and cultivates personally, are equal to four and a half times the family holding.*

(2) The non-protected tenant shall be entitled to compensation from the Government as provided for under this Act in respect of inam lands in his possession in excess of the limit prescribed in sub-section (1) whether cultivated or not.

(3) No non-protected tenant shall be registered as an occupant of any land under sub-section (1) unless he pays to the Government as premium an amount equal to sixty times the land revenue for dry land and twenty times for wet land. The amount of premium shall be payable in not more than ten annual instalments along with the annual land revenue and in default of such payment, shall be recoverable as arrears of land revenue due on the land in respect of which it is payable.

* * *

***10.** Enquiry by Collector in certain cases.—The Collector shall examine the nature and history of all lands in respect of which an inamdar, kabiz-e-kadim, permanent tenant, protected tenant or non-protected tenant, .claims*

to be registered as an occupant under Sections 4, 5, 6, 7 and 8 as the case may be, and decide—

(a) in whose favour, and in respect of which inam lands, the claims should be allowed;

(b) the land revenue and the premium payable in respect of such lands.

***24.** Appeals from orders under Section 10 to prescribed authority.—(1) Any person aggrieved by a decision of the Collector under Section 10 may, within thirty days from the date of decision, or such further time as the prescribed authority may for sufficient cause allow, appeal to the prescribed authority and its decision shall be final.*

(2) If any question arises whether any building or land falls within the scope of Section 9 the same shall be referred to the prescribed authority whose decision shall be final.

* * *

***29.** Savings.—Save as otherwise provided in this Act, no order passed by the Collector or by the Special Tribunal under this Act shall be liable to be cancelled or modified except by the High Court as aforesaid or be questioned in any court of law."*

10. From a reading of Section 3 (supra), it is manifest that all inam lands stand vested in the State of Andhra Pradesh with effect from 20th July, 1955, the date when the Act came into force. Even so, it is common ground that the inam land in dispute had continued to be in possession of Ramachandra Reddy till his demise in the year 1968 whereupon the rights and privileges in regard to the same including those that would have

entitled Ramachandra Reddy to claim occupancy rights under the Act on account of his being in cultivating occupation of the land on the date of the vesting were inherited by his legal heirs – the parties to this appeal. Respondent No.1, it is noteworthy, was the only male member in the family left behind by the deceased. Any recognition of his being in possession and personal cultivation of the land held by his father was, in the absence of any plea or proof of ouster, to be taken as cultivation on behalf of the entire family, and not in his individual capacity. We say so because the demise of Ramachandra Reddy, the original occupant of the land, could not on any juristic principle grant exclusivity to his son (respondent No.1 in this appeal) to claim the right to possession or cultivation of the land which Ramachandra Reddy held in his individual capacity and which upon his demise would logically and as a matter of course devolve upon the legal heirs left behind by him in equal share. The status of respondent No.1 as a legal heir of the deceased was no better than other legal heirs of Ramachandra Reddy. Grant of occupancy rights to Respondent No.1 as the only male member of the family, could not result in the extinction of the rights of the appellants who had an equal claim in no way

inferior to that of respondent No.1 to succeed to estate left behind by the deceased including succession to all such rights that may have been inchoate on the date of the demise of Ramachandra Reddy but as could result in a beneficial grant in his favour based on his being an Inamdar. That the family was joint on the demise of Ramachandra Reddy is not in dispute. That it was dependent upon the land is also not in dispute. In the absence of any evidence much less cogent and credible one to establish ouster of the other members of the Ramachandra Reddy's family it is difficult to appreciate how respondent No.1 could claim the legacy of Ramachandra Reddy whether in regard to the property owned by the deceased or the rights which the deceased had as an occupant. The reference order is, therefore, right when it says :

> *"Right of inheritance and succession is a statutory right. A right in a property which is vested in terms of the provisions of the Hindu Succession Act cannot be taken away, except in terms of provisions of another statute, which would have an overriding effect. Such special statute should be a complete code. It shall ordinarily be a later statute. Ordinarily again it must contain a non obstante clause."*

11. It is fairly well settled principle of law that the possession of a co-heir is in law treated as possession of all the co-heirs. If

one co-heir has come in possession of the properties, it is presumed to be on the basis of a joint title. A co-heir in possession cannot render its possession adverse to other co-heirs not in possession, merely by any secret hostile animus on his own part, in derogation of the title of his other co-heirs. Ouster of the other co-heirs must be evidenced by hostile title coupled by exclusive possession and enjoyment of one of them to the knowledge of the other. ***(***See ***Corea v. Appuhamy 1912 AC 230)***. Reference may also be made to the decision of this Court in ***P. Lakshmi Reddy v. L. Lakshmi Reddy AIR 1957 SC 314*** where this Court has succinctly summed up the legal position as under:

> *"But it is well-settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The coheir in possession cannot render his possession adverse to the other co-heir, not in possession. merely by any secret hostile animus on his own part in derogation of the other co-heir's title. It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster."*

12. Relying upon the principles stated above, this Court in ***Bhubaneshwar Prasad Narain Singh and Ors. V. Sidheswar Mukherjee and Ors. (1971) 1 SCC 556***, almost in similar circumstances held:

> *"In this case we have to consider whether the appellants had laid a claim which a co-sharer could not put forward except by pleading ouster or any other independent ground. Even if they were in actual Khas possession within the meaning of Section 2(k) of the Act it must be held that the plaintiff who was a co-sharer was in constructive possession through the appellants as "under the law possession of one co-sharer is possession of all the co-sharers". We see no reason to hold that the observations of this Court to the above effect in P.L. Reddy v. L.L. Reddy[6] are not applicable to the case before us. The appellants do not claim to be trespassers on the property: neither did they claim any title to the lands adversely to the plaintiff-respondent. The deeming provision of Section 6 must therefore ensure for the benefit of all who in the eye of law would be regarded as in actual possession. It follows that the plaintiff had not lost his share in the Bakasht lands and had a right to them though not as tenure-holder or proprietor but certainly as a Raiyat under the provisions of the Land Reforms Act. The appeal must therefore be dismissed with costs."*

13. In ***Kalgonda Babgonda Patil v. Balgonda Kalgonda Patil and Ors. 1989 Supp (1) SCC 246***, this Court was dealing with inam lands held by ancestors of appellants under Vat Hukums of Kolhapur State. The ancestors of the appellant were holding the watan (inam) land in lieu of service and as they

were holding in the capacity of watan or inam, they were impartible. The Trial Court decreed the suit for partition in regard to watan land. In an appeal before the High Court of Bombay, the Division Bench of that Court held that when watan (inam) rights were abolished, all rights including the right of partition also stood abolished. A three-Judge Bench of the High Court of Bombay overruled the view in another case holding that in view of abolition of inam, the properties enure for enjoyment of the members of the family who are entitled to claim partition. This Court held:

> *"These watan lands continued to be the hereditary property of the family although according to the custom the watan was only in the name of the senior member of the family and the succession according to the custom was in accordance with rule of primogeniture. For the first time under this Act these watans were abolished and the lands were converted into rayotwari lands and therefore it became partible."*

14. The decisions in ***Kalgonda's*** case (supra) and ***Nagesh Bisto Desai*** case (supra) were followed in ***Shivappa Tammannappa Karaban v. Parasappa Hanammappa Kuraban and Ors. 1995 Supp (1) SCC 162***. That was a case arising under the Karnataka Village Officers Abolition Act, 1961. Re-grant was made in that case in the name of the former holder of the village office as a watandar. This Court held that just

because the grant was made in the name of watandar, did not mean that the properties ceased to be joint family properties.

15. In ***Lokraj and Ors. V. Kishan Lal and Ors. (1995) 3 SCC 291*** also this Court was dealing with abolition of inam under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. A suit for partition of the inam land was filed which was contested on the ground that abolition of the pre-existing right, title and interest of inamdar and grant of occupancy right to the occupant of the land disentitled anyone to claim a partition of such land. This Court while holding that the suit was not maintainable on account of abolition of pre-existing right, title and interest of the inamdar, observed:

> ***"4.*** *Consequent to the abolition, the pre-existing right, title and interest of the inamdar or any person having occupation of the inam lands stood divested and vested the same in the State until re-grant is made. The inamdar, thereby lost the pre-existing right, title and interest in the land. The right to partition itself also has been lost by the statutory operation unless re-grant is made. We are not concerned with the consequences that would ensue after re-grant of this appeal. Therefore, it is not necessary for us to go into the question that may arise after the re-grant."*

16. It is evident from the above that the right of partition was held to have been lost by operation of law. Till such time the grant was made no such right could be recognized observed this

Court. This Court specifically held that it was not concerned with the consequences that would ensue after grant is made. The suit in the present case was filed after the grant of occupancy rights. The question here is whether the grant of such rights is for the benefit of one of the members of the joint family or for all the heirs left behind by Ramachandra Reddy. Our answer to that question is in favour of the appellants. In our opinion, the grant of such occupancy rights in favour of respondent no.1 was for the benefit of all the legal heirs left behind by Ramachandra Reddy. Reliance upon ***Lokraj***'s case (supra), therefore, is of no assistance to the respondents. We are also of the view that the decision in ***Lokraj***'s case (supra), does not correctly apply the earlier decision of this Court in ***Bhubaneshwar Prasad Narain Singh's*** case (supra). With utmost respect to the Hon'ble Judges who delivered the decision in ***Lokraj's*** case, the law was not correctly laid down, if the same was meant to say that even in the absence of a plea of ouster, a co-heir could merely on the basis of grant of the occupancy rights in his name exclude the other co-heirs from partition of the property so granted.

17. In the result, we allow this appeal and set aside the judgment and order passed by the Courts below to the extent

the same hold that inam lands granted in favour of respondent no.1 upon abolition of the inam under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 are not partible among the heirs left behind by Shri Ramachandra Reddy. The suit filed by the appellants shall resultantly stand decreed even *qua* the inam land in the same ratio as has been determined by the High Court by the impugned judgment in regard to other items of properties. No costs.

……………………………….……J.
(T.S. THAKUR)

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(C. NAGAPPAN)

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(ADARSH KUMAR GOEL)

New Delhi
September 23, 2014