REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 4380-4382 OF 2016

SUNKARA LAKSHMINARASAMMA (D) BY LRs. ..APPELLANTS

VERSUS

SAGI SUBBA RAJU & OTHERS ETC. ..RESPONDENTS

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

These appeals are directed against the common judgment in Letters Patent Appeal No. 323 of 1992 and Appeal Nos. 2959 and 2960 of 2001 dated 11 September, 2003 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad. The appellants herein were the plaintiffs in O.S. No. 98 of 1984 on the file of the Subordinate Judge, Bhimavaram (formerly O.P.

No.124/1980), and O.S. No. 97 of 1984 on the file of the Subordinate Judge, Bhimavaram (formerly O.P. No.10/1982). They were the defendants in O.S. No. 72 of 1983 on the file of the Subordinate Judge, Bhimavaram (formerly O.P. No.32/1978 on the file of the Subordinate Judge, Narsapur).

2. O.S. No. 98 of 1984 was filed for partition of Schedule A property against Defendant Nos. 5 to 25. In this suit, only one alienation made by Veeraswamy (the plaintiff Lakshminarasamma's son) was assailed, though Veeraswamy had alienated various other properties through different sale deeds falling under Schedule A. O.S. No. 97 of 1984 was filed for partition of Schedule A and B properties as well as for eviction of Defendant Nos. 26 to 125 and 127 from the said properties. O.S. No. 72 of 1983 was filed by one Sagi Subba Raju (one of the respondents in these appeals) for specific performance of an agreement of sale dated 19.09.1974 executed by the late Veeraswamy covering an extent of 3 acres 56 cents in Revenue Survey Nos. 347 and 347/3 of Bhimavaram village.

O.S. Nos. 97 of 1984 and 98 of 1984 (for partition of Schedule A and B properties) were dismissed by the trial Court and confirmed by the first appellate Court. O.S. No. 72 of 1983

(suit for specific performance) was decreed partly, directing sale of 1/3rd of the property in favour of the plaintiff Sagi Subba Raju, and such decree was confirmed by the first appellate Court. Feeling aggrieved by these judgments and decrees, the unsuccessful appellants filed appeals before the High Court. So also, Sagi Subba Raju, who was to get 1/3rd of the property in the suit for specific performance filed L.P.A. No. 323 of 1992 before the High Court. All these appeals were heard together by the High Court and decided against the appellants herein, which means that the judgments and decrees of dismissal passed in O.S. Nos. 97 & 98 of 1984 were confirmed by the Division Bench of the High Court also. Thus, there are concurrent findings of three Courts in respect of those two suits filed by appellants for partition against the appellants herein. In respect of O.S. No. 72 of 1983 also, the Division Bench proceeded to grant a decree, as prayed for, in favour of Sagi Subba Raju and against the appellants herein. In other words, the suit for specific performance also was decreed fully against the appellants herein. Hence, the appellants are before this Court.

3. Shri A. Subba Rao, learned advocate appearing on behalf of the appellants, taking us through the material on record,

submits that the Courts below were not justified in concluding that the bequests (Wills) relied upon by the defendants, i.e. Will dated 14.08.1932 (Exhibit B4/Ex.P1) in respect of Schedule A property and the Will dated 05.10.1968 (Exhibit B106/Ex. P2) in respect of Schedule B property executed for the benefit of Veeraswamy, were proved; that the plaintiffs have got 2/3rd share in the suit properties and therefore the bequests (Exhibits B4 and B106) will not confer any right to the beneficiary in excess of remaining 1/3rd of the properties. Lastly, he submitted that the Defendant Nos. 5 to 125 & 127, being the purchasers of the properties from Veeraswamy (in whose favour the Wills were executed), are liable to be evicted inasmuch as Veeraswamy did not have any right, title or interest over the suit properties to the full extent, on the other hand, Veeraswamy had only 1/3rd share in the suit properties.

4. Per contra, learned counsel appearing on behalf of the respondents contends that the judgment of the Division Bench of the High Court is just and proper and needs no interference. The trial Court, the first appellate Court and the Division Bench of the High Court have held that Exhibit B4 and Exhibit B106 are proved in accordance with law and consequently Veeraswamy

became the owner of the property from the said Wills. He further submitted that the defendants/purchasers have been in peaceful possession of the suit properties for more than 40 to 50 years and some of the defendants have even alienated the properties to third parties. Lastly, he submitted that the appeals are not maintainable since a number of defendants (purchasers from Veeraswamy) were deleted from the array of parties by the appellants herein, and some of the defendants have died during the pendency of the suits as well as the first appeals and second appeals and their legal representatives were not brought on record by the appellants herein. Even before this Court, some of the defendants/respondents have expired. The appellants have not bothered to bring on record the legal representatives of such deceased defendants. As a result, the decree passed in favour of the deceased and deleted defendants holding that Veeraswamy had the right to sell the property has attained finality, and consequently the sales made in favour of such defendants have attained finality too. In other words, the validity of the Wills as well as that of the sale deeds stands confirmed in respect of the deceased/deleted defendants and therefore these appeals, which are pending consideration in respect of other defendants before

this Court, are liable to be dismissed in view of the fact that in case any order is passed adverse to the interest of the respondents herein/remaining defendants, the same would be conflicting with the judgments and decrees which are already confirmed as against the deceased/deleted defendants.

5. Exhibit B4, the Will dated 14.08.1932, pertains to Schedule A property. The said Will was executed by Sunkara Padmanabhudu, who was admittedly the owner of the Schedule A properties. He had no issue. His wife also expired shortly after his death. The beneficiary under the said Will was Veeraswamy, who is none other than the grandson of Sunkara Venkataramaiah (the brother of Sunkara Padmanabhudu). Exhibit B106, the Will dated 05.10.1968 pertains to Schedule B property. The said Will was executed by Laxmipathi (the father of Veeraswamy) in favour of his son Veeraswamy. Sunkara Padmanabhudu expired on 20.08.1932 and Laxmipathi died on 21.01.1969. Thus, Veeraswamy became the owner of Schedule A and B properties, after the demise of Sunkara Padmanabhudu and Laxmipathi. There is nothing on record to show that the properties in Schedule B were the joint properties of Laxmipathi and his son. So also, it is not established by the plaintiffs that

Schedule B properties were available for partition. There are concurrent findings of three Courts on the said point against the appellants/plaintiffs in partition suits. The plaintiff Laxminarasamma is the second wife of Laxmipathi, who has not specifically questioned the alienations made by her son Veeraswamy in favour of Defendant Nos. 5 to 125 by filing O.S. Nos. 97 & 98 of 1984. There is no prayer by her for getting the sale deeds cancelled. All the three Courts concurrently on facts have concluded that both the Wills are proved. Even before us, the findings of the validity of the Wills etc. have not been seriously disputed by the appellants. Even otherwise, on going through the judgments of the three Courts, we find that the reasons assigned and the conclusions arrived at in respect of proof of both the Wills are just and proper. Hence, no interference is called for.

6. Since Veeraswamy was the sole owner of the properties by virtue of Exhibits B4 and B106 Wills, naturally he had the right to alienate the properties. Defendant Nos. 5 to 125 and 127 had purchased the properties for valuable consideration from Veeraswamy. As mentioned supra, the alienations made in favour of these defendants/purchasers were not questioned by the

appellants in the aforementioned two suits for partition. Be that as it may, since we find that the Courts below are justified in concluding that the sales made in favour of Defendant Nos. 5 to 125 and 127 are just and proper and as they are bona fide purchasers for valuable consideration, no interference is called for.

7. Shri A. Subba Rao, learned counsel for the appellants was however forceful in his arguments, insofar as the suit for specific performance is concerned. According to him, the appellants herein (defendants in the suit for specific performance) would be put to hardship if the decree for specific performance is confirmed, inasmuch as there has been a huge escalation in the price of the properties since the agreement of sale. Such plea of escalation in price cannot be accepted in view of the fact that the appellants in the first instance do not have the right to question the agreement of sale. As mentioned supra, since Veeraswamy was the absolute owner of the properties including the property involved in the suit for specific performance, he had the right to enter into an agreement of sale also. This property was bequeathed to Veeraswamy under Exhibit B4 Will by Padmanabhudu. Hence, Veeraswamy was the sole owner of the

property. Consequently, he had entered into an agreement of sale with Sagi Subba Raju, as far back as on 19.09.1974. The suit was filed in the year 1978, which was later transferred to another Court and the same was re-numbered as O.S. No. 72 of 1983. Since 1978, this litigation is being fought by the prospective vendee. The property of about three and half acres was agreed to be sold by Veeraswamy in favour of the prospective vendee in the year 1974 for a sum of Rs.51,000/. Such price was agreed to between the vendor as well as the prospective vendee. This Court cannot imagine the value of the property as it stood in the year 1974 in the said area, i.e. at Bhimavaram village in Andhra Pradesh. Be that as it may, we find that hardship was neither pleaded nor proved by the appellants herein before the trial Court. No issue was raised relating to hardship before the trial Court. A plea which was not urged before the trial Court cannot be allowed to be raised for the first time before the appellate Courts. Moreover, mere escalation of price is no ground for interference at this stage (see the judgment of this Court in the case of *Narinderjit Singh vs. North Star Estate Promoters Limited*, (2012) 5 SCC 712). Added to it, as mentioned supra, the appellants do not have the *locus standi* to question the judgment

of the Division Bench since they are not the owners of the property. As a matter of fact, Veeraswamy, the vendor of the properties, had entered the witness box before the trial Court and supported all his alienations in favour of the defendants. Therefore, in our considered opinion, the Division Bench has rightly concluded in favour of Sagi Subba Raju and against the appellants and granted the decree for specific performance.

8. In any event, Shri Thomas P. Joseph, learned senior advocate appearing on behalf of the respondents is justified in contending that these appeals are not maintainable since a number of defendants against whom the relief is sought/claimed have either been deleted from the array of parties, or are dead. The legal representatives of such deceased defendants have not been brought on record. Even before this Court, Respondent No.7 (D8), Respondent No.8 (D9), Respondent No.9 (D10) and Respondent No.11 (D13) in Civil Appeal No. 4382/2016 @ SLP(C) No. 20376/2004 have died. Their legal representatives have also not been brought on record. It is relevant to note here itself that Defendant Nos. 4, 6, 36, 50, 54, 58, 67, 69, 73, 77, 82, 92, 93, 113, 120 and 127 expired during the pendency of the matter before the trial Court in O.S. No. 97 of 1984. So also, Defendant

Nos. 20, 53, 64 and 118 have also died and their legal representatives have also not been brought on record.

9. Order 22 Rule 4, CPC lays down that where within the time limited by law, no application is made to implead the legal representatives of a deceased defendant, the suit shall abate as against a deceased defendant. This rule does not provide that by the omission to implead the legal representative of a defendant, the suit will abate as a whole. If the interests of the co-defendants are separate, as in the case of co-owners, the suit will abate only as regards the particular interest of the deceased party. In such a situation, the question of the abatement of the appeal in its entirety that has arisen in this case depends upon general principles. If the case is of such a nature that the absence of the legal representatives of the deceased respondent prevents the court from hearing the appeal as against the other respondents, then the appeal abates in toto. Otherwise, the abatement takes place only in respect of the interest of the respondent who has died. The test often adopted in such cases is whether in the event of the appeal being allowed as against the remaining respondents there would or would not be two contradictory decrees in the same suit with respect to the same

subject matter. The court cannot be called upon to make two inconsistent decrees about the same property, and in order to avoid conflicting decrees the court has no alternative but to dismiss the appeal as a whole. If on the other hand, the success of the appeal would not lead to conflicting decrees, then there is no valid reason why the court should not hear the appeal and adjudicate upon the dispute between the parties. In the matter on hand, the absence of certain defendants who have been deleted from the array of parties along with the absence of legal representatives of a number of deceased defendants will prevent the court from hearing the appeals as against the other defendants. We say so because in the event of these appeals being allowed as against the remaining defendants, there would be two contradictory decrees in the same suit in respect of the same subject matter. One decree would be in favour of the defendants who are deleted or dead and whose legal representatives have not been brought on record; while the other decree would be against the defendants who are still on record in respect of the same subject matter. The subject matter in the suit is the validity of the two Wills. The Courts including the Division Bench of the High Court have consistently held that the

two Wills are proved, and thus Veeraswamy being the beneficiary under the two Wills had become the absolute owner of the suit properties in question. Such decree has attained finality in favour of the defendants who are either deleted or dead and whose legal representatives have not been brought on record. In case these appeals are allowed in respect of the other defendants, the decree to be passed by this Court in these appeals would definitely conflict with the decree already passed in favour of the other defendants. As mentioned supra, the Court cannot be called upon to make two inconsistent decrees about the same subject matter. In order to avoid conflicting decrees, the Court has no alternative but to dismiss the appeals in their entirety (see the judgment of this Court in the case of *Shahazada Bi vs. Halimabi,* (2004) 7 SCC 354).

10. In view of the above, the appeals fail not only on the ground of non-maintainability, but also on merits, and are dismissed.

.....J
[N.V. RAMANA]

.....J

[MOHAN M. SHANTANAGOUDAR]

NEW DELHI; .....J.
NOVEMBER 28, 2018. [MUKESHKUMAR RASIKBHAI SHAH]