

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No.8548 of 2009

P. ISHWARI BAI

.... Appellant(s)

Versus

ANJANI BAI & ANR.

.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. The Appellant is the 1st Plaintiff in the suit and the Respondent No.1 is Defendant No.1. They are referred to as arrayed in the suit for convenience.

2. The 1st Plaintiff along with her husband Narsoji filed a suit for declaration of title and for recovery of possession. The suit was decreed by a judgement dated 25.04.1986 passed by the Additional Chief Judge, City Civil Court, Hyderabad, declaring the title of the Plaintiffs to the suit house and directing Defendant Nos.1 and 2 to deliver the vacant possession of the suit house. A learned Single Judge of the High Court of Andhra Pradesh reversed the judgement

of the Trial Court and dismissed the suit. The Division Bench of the High Court dismissed the LPA filed by the Plaintiffs on 05.08.2008 giving rise to this Appeal.

3. It is relevant to mention that Plaintiff No.2 Narsoji died on 25.07.2008 during the pendency of the LPA before the High Court. Leave was granted to file Appeal by this Court on 14.02.2009. During the pendency of the Appeal in this Court, Defendant No.2 died in the year 2013. On 04.07.2014, Plaintiff No.1 filed an application for bringing the legal representatives of deceased Defendant No.2 on record. It is to be noted that Defendant No.1 is the wife of Defendant No.2. The Registry of this Court pointed out certain defects in the application for bringing the remaining legal representatives of the deceased Defendant No.2 on record. Due to the default of not curing the defects pointed out by the Registry, Defendant No.2 was deleted from the array of parties by an order dated 28.10.2015. When the matter was listed for hearing on 23.10.2019, learned counsel for Defendant No.1 sought dismissal of the appeal as not being maintainable in view of the deletion of Defendant No. 2 from the array of parties. Thereafter, an application was filed by the Plaintiff for setting aside the abatement and for

restoration by condoning the delay in filing the application, in which notice was issued.

4. During the course of hearing of the appeal, Ms. Purna Singh learned counsel for Defendant No.1 took a preliminary objection to the maintainability of the appeal in view of the abatement of the appeal insofar as Defendant No.2 is concerned. She relied upon the judgement of this Court in ***Goli Vijayalakshmi & Ors. v Yendru Sathiraju & Ors.***¹ to argue that there cannot be contradictory decrees in the event of Plaintiff succeeding in the appeal.

5. Mr. A.T.M. Rangaramanujam, learned Senior Counsel appearing for the Plaintiff countered the said submission and argued that in terms of Order XLI Rule 4 of the Code of Civil Procedure, 1908 the Appeal is still maintainable in spite of death of one of the Defendants. He relied upon the judgement of this Court in ***Mahabir Prasad v. Jage Ram & Ors.***² in which it was held as follows: -

“Where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in that behalf that he is also on the record, as an heir and legal representative. Even if there

1 (2019) 11 SCC 352

2 (1971) 1 SCC 265

are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the Limitation Act, the proceeding will not abate.”

6. As stated earlier, Defendant No.1 is the wife of Defendant No.2, who died during the pendency of this appeal. As the legal representative of the 2nd Defendant is on record, we propose to hear this Appeal on merits.

7. The Plaintiffs' case before the Civil Court is that the suit property which is the house in survey No. 134, Malakpet, Hyderabad was purchased from Defendant No.4. It was averred in the plaint that Defendants No.1 and 2 trespassed on the property in September, 1975. Defendants No. 1 & 2 denied the averments made in the plaint. According to Defendants No.1 & 2, Mrs. Akbarunnissa Begum was the owner of Survey No.108. She sold 490 sq. yards to Mr. B. N. Chowlkar through a registered sale deed dated 26.07.1960. Mr. B. N. Chowlkar sold the plot to Mrs. Pullasetty Maniamma by a registered sale deed dated 21.08.1961. Defendant No.1 purchased the said plot on 18.09.1974 and a registered sale deed was executed in her favour on 03.09.1975.

8. The Trial Court held that Defendant No.4 had title to the said house. The Plaintiff purchased the property from Defendants No.3 and 4. Defendant Nos.1 and 2 were declared to be trespassers. In the appeal filed by Defendants No. 1 and 2, a learned Single Judge of the High Court allowed the application filed under Order XLI Rule 27 and accepted the judgement dated 18.06.1987 in CCCA No.146 of 1979 as additional evidence and marked it as Exhibit B-14. CCCA No.146 of 1979 arose out of a judgment dated 30.12.1978 in O.S. No.22 of 1970 on the file of the Additional Chief Judge, City Civil Court, Hyderabad. The learned Single Judge held that the suit house is not in Plot No.14 forming part of Survey No.134 at Malakpet, Hyderabad but it is part of plot No. 213-A forming part of Survey No. 108 at Malakpet as pleaded by Defendant Nos. 1 & 2. The reasons given by the High Court for such conclusion is that Defendants No.3 and 4, the vendors of the Plaintiff were not examined. The evidence of the son of Defendant No.4 was scrutinised by the learned Single Judge and found him to be unreliable for the following reasons: -

- a) He did not know the contents of the power of attorney though he executed the sale deed in favour of the Plaintiff as attorney to his father, Defendant No.4.

- b) He did not have any clue as to when his father made an oral gift of the suit house to Defendant No.3, and
- c) He did not have any knowledge about the house number of the suit house.

9. On the basis of the findings in an earlier judgement of the civil Court (Exhibit B-8), the learned Single Judge held that the son of Defendant No.4 used to indulge in speculative litigation claiming property worth lakhs of Rupees by filing suit as an indigent person. The evidence of PW-2 and PW-4 were also examined by the learned Single Judge to hold that it was not of much help to the Plaintiff. One strong circumstance, which was noted by the learned Single Judge is Exhibit A-1 in which it was mentioned that Defendant No.4 conveyed the suit premises in favour of Defendant No.3 by way of oral gift but the said recital was found struck off and initialled by Defendant No.3. The relationship, if any between Defendants No.3 and 4 was not proved. The learned Single Judge of the High Court disbelieved the averments of the Plaintiff that Defendant No.4 gifted valuable land measuring 490 sq. yards in Malakpet to Defendant No.3. Finally, the learned Single Judge held that the Plaintiff failed to establish her title over the suit house and possession of the same from 07.11.1974.

10. A Division Bench of the High Court upheld the judgement of the learned Single Judge and held that the suit plot is not forming part of plot in new Survey No.134 corresponding to old Survey No. 107 as pleaded by the Plaintiffs.

11. The main contention of the learned Senior Counsel for the Plaintiff is that the application filed under Order XLI Rule 27 by Defendant Nos. 1 and 2 was wrongly allowed by the learned Single Judge. The application filed under Order XLI Rule 27 by Defendant Nos. 1 and 2 was for placing a judgement of the High Court in CCCA No.146 of 1979 dated 18.06.1987 on record. CCCA No. 146 of 1979 arose out of the judgment dated 30.12.1978 in O.S. No.22 of 1970, which was not a part of the record in the Civil Court. No prejudice is caused to the Plaintiff by the judgment of the Appellate Court in CCCA No. 146 of 1979 being permitted to be adduced as additional evidence in the appeal.

12. We do not find any substance in the submission made by Mr. A.T.M. Rangaramanujam, learned Senior Counsel for the Plaintiff that the High Court committed an error in setting aside the judgement of the Trial Court. We are in agreement with the well-considered judgement of the High Court in

which there is a detailed discussion of all the issues. The High Court thoroughly discussed the entire evidence to come to a conclusion that the Plaintiff has not made out any case for declaration of title over the disputed property in her favour. The judgement of the learned Single Judge was upheld by the Division Bench of the High Court on appreciation of the evidence, with which we agree. Accordingly, the Appeal is dismissed.

.....J.
[L. NAGESWARA RAO]

.....J.
[B. R. GAVAI]

**New Delhi,
September 01, 2021.**