

Enuga Lakshamma

Vs

Vennapuse Chinna Malla Reddy (Dead) By Lrs.

Civil Appeal No. 1433 (N) of 1971

(V. D. Tulzapurkar, V. Khalid JJ)

07.02.1985

JUDGMENT

1. The plaintiff-appellant's suit for possession of suit properties and mesne profits based on title was decreed by the trial court but was dismissed by the High Court in appeal on the ground that she had validly surrendered her limited estate in the properties in favour of her deceased husband's nearest reversioner under a Deed of Surrender Ex. B-1 executed by her on February 7, 1948 and hence appeal to this Court.

2. The principal question which fell for determination was whether on the date of Deed of Surrender the plaintiff-appellant was minor or major for if she were a minor the document would be invalid. The trial court came to the conclusion that she was a minor at the relevant date and her suit was decreed but the High Court reversed the trial court's finding and came to the conclusion that at the relevant date she was a major.

3. It appears that at the trial the plaintiff-appellant relied upon birth extract produced at Ex. A-1 which showed her birth date as July 22, 1934 but because of erasers contained in Ex. A-1 the defendant got the original birth register produced but that also contained erasers and corrections. After keeping a copy of the entry in the birth register at Ex. B-4 the original register was returned by the trial court to the concerned authority, with the result the original register could not be perused by High Court. Ex. B-4 also showed the birth date as July 22, 1934. As against these extracts the defendants relied upon another birth extract produced at Ex. B-6 which pertained to the plaintiff-appellant in which her birth date was shown as December 16, 1929. The High Court on appreciation of the documentary material produced on either side was not inclined to place any reliance upon Exs. A-1 and B-4 and has preferred the extract at Ex. B-6 and while doing so has given reasons. Mainly it felt that there were discrepancies and erasers found in the documents on which reliance had been placed by the plaintiff-appellant. But apart from these aspects touching the documentary evidence relied upon by the appellant, the High Court found fault with plaintiff in not examining her own father or her brother who was conducting and looking after the litigation on her behalf and drew adverse inference from said non-examination, particularly the non-examination of her father who would have been the best witness on the issue. The reasons for not examining these two persons as witnesses are not far to seek. The father was an identifying witness to the Deed of Surrender which had been executed by the plaintiff and he would have been naturally confronted with the document which the plaintiff was seeking to get over. As regards the brother he had himself made an application being Ex. B-25 dated July 7, 1965 in which he had given the name of his mother as Ramulamma alias Namma and the former was the name mentioned as the plaintiff's mother in the birth extract produced at Ex. B-6 by the defendant and naturally he would have been confronted with his own application which went to support the birth extract relied upon by the

defendant. In our view the non-examination of plaintiff's father on the most material issue arising in the case, namely, the birth date of the plaintiff will have to be regarded as fatal to the plaintiff's case and the High Court was right in drawing adverse inference against the plaintiff on this aspect. The matter pertains to appreciation of evidence on a question which is purely a question of fact and we see no reason to differ with the appreciation made by the High Court.

4. Having regard to the above discussion the High Court was right in coming to the conclusion that the plaintiff was major on the date when the Deed of Surrender was executed by her and if that Deed is valid document plaintiff's claim to suit properly cannot be sustained.

5. Appeal is, therefore, dismissed but there will be no costs.

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