SUPREME COURT OF INDIA

Bhoomireddy Chenna Reddy

Vs.

Bhoospalli Pedda Verrappa

C.A.No.566 of 1981

(K. Ramaswamy and G. T. Nanavati, JJ.)

28.11.1996

ORDER

1. The appellants are sons of the brother of Bhoomireddy Pedda Chennaiah. The respondents are the sons of the sister of Laxmamma, widow of Pedda Chennaiah, Pedda Chennaiah during his life time had bequeathed all his properties to his wife Laxmamma by his registered Will dated May 12, 1947 with right to enjoy the property with vested reminder in the respondents with absolute right and he died on May 25, 1947. Laxmamma held the property during her life time and she died on October 21, 1965. When the appellants started interfering with the possession and enjoyment of the plaint schedule properties, the respondents filed O.S. No. 187/69 in the Court of District Munsif at Anantapur for a perpetual injunction. The trial Court decreed it. On appeal, the Additional District Judge confirmed the same. In the Second Appeal No. 437/77, by judgment and decree dated February 21, 1979 the learned single Judge of Andhra Pradesh dismissed the same. Thus, this appeal by special leave.

2. Mr. K. Madhava Reddy, learned senior counsel appearing for the appellants, is right in his contention that Laxmamma having for (got) the properties under the Will executed by her husband Pedda Chennaiah, as a limited owner, after Hindu Succession Act, 1956 came into force she became an absolute owner as her limited right of enjoying the property during her lifetime for her

maintenance ripened into an absolute estate under Section 14(1) of that Act and that she died as a full owner of the said properties. The legal position in this behalf is settled by this Court in C. Masilamani Mudaliar v. Idol of Shri Swaminathanswami Thirukoil, (1996) 8 SCC 525 : (1996 AIR SCW 1780), wherein it has been held that the properties given to the wife by the husband under his Will for maintenance must be construed to have been acquired by the wife, in view of her pre-existing right to maintenance. When properties are thus bequeathed for its enjoyment in life, it cannot be said to be right acquired for the first time under the Will but it has to be considered as a reflection of the pre-existing right. After 1956, her limited right got enlarged into absolute right by operation of Section 14(1) of the said Act. She will have to be treated as having become an absolute owner. However, the real question which arises for consideration is: whether an injunction could have been granted in favour of the respondents in view of the facts of this case ? It is seen that even during the life time of Laxmamma, after the demise of Pedda Chennaiah, the respondents came in possession of the property and were enjoying the same right from 1947. The properties were mutated in their names. It is also an admitted fact that in 1951, the appellants themselves had purchased some of the properties, the subject matter of the Will, from the respondents. In view of these facts, the question arises whether an injunction can be granted against the appellants ? The trial Court as well as the appellate Court have concurrently found as a fact thus :

"The lands were transferred in the name of the responents and pattas also were granted to them and they were in possession and enjoyment of the property since the death of their testator. Voluminous evidence clearly demonstrated the fact. In view of the admission made by the appellants that the respondents were in possession of the part of the properties purchased from the respondents, it would clearly indicate that the respondents remain in possession of the property right from the date of the death of the testator. Under these circumstances, the injunction was rightly granted against the appellants."

3. Shri K. Madhava Reddy has contended that no injunction can be granted against a true owner. As a proposition of law, it is indisputable. But the question is: Whether the appellants have become owners of the property? Several imponderable things would arise until that declaration is given to them. It is seen that when the respondents have been in possession and got their names mutated in assertion of their right, right from 1947, may be it was open to them to contend that they remained in possession in assertion of their own right even to the knowledge of the appellants and the appellants had acquiesced to it. The admitted purchase of the properties from them by the appellants themselves may lend assurance to that assertion. Therefore, it would be open to them to raise that plea, had the appellants asserted their right. But it is a fact that no such issues were raised as no such plea was taken. Under these circumstances, we think that the injunction, due to the above documentary evidence and admitted facts, was rightly granted against the appellants.

4. The appeal is accordingly dismissed. No costs.

Appeal dismissed.