

**SUPREME COURT OF INDIA**

N. Srihari (Dead) through LRs.

Vs.

N. Prakash

S.L.P.(Civil) No.17945 of 2009

(P.Sathasivam and Dr.B.S.Chauhan JJ.)

29.10.2010

**ORDER**

1. All these four special leave petitions have been filed against the judgment and order of the High Court of Andhra Pradesh at Hyderabad dated 30th January, 2009, passed in A.S. No. 78 of 1994 and A.S.M.P. No. 14246 of 2004. This case has a chequered history as the parties have been fighting for several decades and this is the second round of litigation before this court. The parties except the petitioner in S.L.P(C) No. 21695 of 2009, belong to the same family and the dispute is with regard to the properties left by one N. Saya Goud and his wife Chandramma. N. Saya Goud and Chandramma had two sons, namely, N. Balrajaiah Goud and N. Sathaiah Goud. N. Balrajaiah had deserted his first wife, N. Pentamma and arranged a second marriage with N. Kausalya. N. Sathaiah Goud married Sulochana and out of their wedlock six sons were born. N. Balrajaiah Goud also has five sons from his second wife N. Kausalya. N. Saya Goud died in 1956, however, before his death, he executed a Will dated 2nd January, 1956 in favour of his wife Chandramma and, deserted wife of his son N. Balrajaiah Goud, namely, N. Pentamma in respect of land measuring 19.15 guntas covered by Survey Nos. 284, 285, 290, 292 and 293 situate in Lothukunta village of Alwal Mandal, Ranga Reddy District. The said land was under his protected tenancy. He also gave cash of Rs.30,000/- and gold weighing 140 tolas to his wife.

2. After the death of N. Saya Goud, the properties covered by the Will came into exclusive possession and enjoyment of N. Chandramma and N. Pentamma. Subsequently, the said two beneficiaries of the Will purchased the rights of the Pattadar under an unregistered sale deed in respect of the land mentioned in the Will and, thus, became the absolute owners of the said land. They also purchased agricultural land in Survey Nos. 291 and 602 of Lothukunta village to the extent of 1.30 guntas. Thus, their total joint holding had been to the extent of acres 21.05 guntas.

3. On 6th March, 1969 three documents were executed and registered. By one document Smt. N. Chandramma and Smt. N. Pentamma executed a Settlement Deed bearing Registration No. 467 in favour of Smt. Sulochana W/o Shri N. Sathaiah Goud in respect of

the land to the extent of 2982 square yards from their joint holding. By another document, Smt. Chandamma transferred her life interest in the property in favour of Smt. Pentamma; and by the third document Smt. Sulochana W/o Shri N. Sathaiah Goud executed a Disclaimer Deed, disclaiming any right or interest in the properties, that stood jointly vested with Smt. Pentamma and Smt. Chandamma i.e. the land to the extent of acres 21.05 guntas.

4. The elder son of Smt. N. Pentamma, namely, Shri N. Srihari filed a suit in 1977 for partition against his mother Smt. N. Pentamma and grand mother Smt. Chandamma and his brothers. However, the said suit was compromised on 20th October, 1981 after expiry of their father Shri N. Balrajaiah on 24th May, 1981.

5. In December 1984, the sons of Shri N. Sathaiah Goud claimed the entire share of Smt. N. Chandamma through a Will executed by her on 28th September, 1979 in their favour and it was found in a box after her death on 23rd April, 1984. It is on the basis of this Will dated 28th September, 1979, that Original Suit No. 456 of 1984 was filed by the respondents/plaintiffs in the court of Principal Sub-Judge, Ranga Reddy District. The said Suit was renumbered as O.S. No. 9 of 1993. In the said Suit, the present petitioners have been impleaded as defendants along with their mother Smt. N. Pentamma. They filed the written statements admitting Will dated 2.1.1956 and all other documents. However, it was contended that the Will dated 2nd January, 1956 had created only leasehold rights in favour of the beneficiaries, Smt. N. Chandamma and Smt. N. Pentamma and lost its significance once the protected tenancy rights had been converted into freehold rights as they purchased the suit property for consideration from the landlord Shri Krishnan.

6. The trial court decreed the suit vide judgment and decree dated 8th September, 1993 by the District Judge, Ranga Reddy at Saroornagar, Hyderabad in favour of the respondents.

7. Aggrieved by the said judgment and decree dated 8th September, 1993, the petitioners preferred Appeal No. 78 of 1994 before the High Court of Judicature Andhra Pradesh at Hyderabad. In the said appeal, Miscellaneous Application No. 17581 of 2001 was filed for calling for the original documents, namely, the Will executed by Shri N. Saya Goud dated 2nd January, 1956 and Release Deed dated 6th March, 1969 executed by Smt. Chandamma in favour of Smt. N. Pentamma, as the Will dated 2.1.1956 had been filed in the court in a case filed by the Andra Bank against the present petitioners as they had taken a loan and could not repay the said amount. The petitioners also filed C.M.P. No. 17582 of 2001, on 12th September, 2001, asking the High Court to take a copy of the unmarked Will of Shri N. Saya Goud dated 2nd January, 1956. However, those documents could not be produced before the High Court. Vide judgment and order dated 17th February, 2005, the High Court dismissed the appeal filed by the petitioners.

8. Being aggrieved, the petitioners approached this Court by filing S.L.P.(C) Nos. 17808-09 of 2005 and this Court entertained the said petitions and granted interim relief vide order dated 5th September, 2005, directing the trial court to proceed with the final decree proceedings but not to sign the final decree without the leave of this Court.

9. This Court vide judgment and order dated 19th February, 2008, disposed of the said Civil Appeal Nos. 1420-21 of 2008 in *N. Srihari (Dead) Through LRs. & Ors. v. N. Prakash & Ors.*<sup>1</sup>, remanding the case to the High Court to decide afresh after considering the Will dated 2nd January, 1956, executed by Shri. N. Saya Goud. The parties were also permitted to place the original Will dated 2nd January, 1956, for consideration of the High Court, in case the said document was not available in original, the parties would be entitled to place the certified copy of the Will dated 2nd January, 1956.

10. In pursuance of the said order, the High Court decided the matter afresh vide judgment and decree dated 30th January, 2009. However, it may be pertinent to mention here that the original Will or a certified copy of the said Will was not placed before the High Court. The High Court held that as the copy of the photocopy of the Will dated 2nd January, 1956, could not be taken on record, and the application in this regard stood rejected.

“Against the said order, S.L.P.(C) No.11716 of 2009 has been filed. In view of the order, we are going to pass in other connected matters considering the impugned judgment and order passed by the High Court, it is not necessary to deal with this special leave petition and it is hereby rejected.”

11. So far as the S.L.P.(C) No. 21695 of 2009 titled *Ramesh Chawla v. N. Srihari & Ors.* is concerned, the same has been filed against the impugned judgment and order in other petitions. In this case, a miscellaneous application has been filed by the petitioner herein for impleadment in view of the fact that they had claimed to have purchased a land measuring 500 square yards from the sisters of the original plaintiffs after the judgment and decree of the trial court and during the pendency of the appeal before the High Court. The High Court has held that his interest by such an application shall be covered by Doctrine of Lis Pendens, therefore, his impleadment was not necessary. Shri P.S. Mishra, learned senior counsel appearing for the petitioner, has made submissions to substantiate his claim.

12. The remaining two special leave petitions filed by the original defendants are against the same judgment and order. They were heard together and disposed of by common order.

13. The Will of Shri N. Saya Goud dated 2nd January, 1956, granted only protected tenancy rights to his widow Smt. N. Chandamma and his daughter-in-law Smt. N. Pentamma. Subsequently, the afore- mentioned beneficiaries of the said Will purchased the freehold rights for consideration and became the absolute owners of the property.

14. Even if the copy of the photocopy of the Will of Shri N. Saya Goud dated 2nd January, 1956 is taken on record and considered, it did not create merely life-interest in the property for Smt. N. Chandamma. The relevant part thereof reads: "I am worried about my wife Chandamma and my eldest daughter-in-law Pentamma. When the case was run in the court I have taken up the responsibility of maintenance of Pentamma.

“Hence, by virtue of this Will deed, I am giving away all my movable and immovable properties to these two. As long as the life time of my wife Chandramma, the said Pentamma shall serve her and incur the income derived from the said property for their (two) welfare. My self and my wife together struggled hard and earned the said property. Hence, nobody shall have any right in it.”(Emphasis added)

In fact the Will provides for a direction to Smt. N. Pentamma to serve her mother in law Smt. N. Chandramma during her life time. It does not provide that Smt. N. Chandramma would have only a right of maintenance during her life time.”

15. The Release Deed dated 6th March, 1969 executed by Smt. N. Chandramma in favour of her daughter-in-law Smt. N. Pentamma talks of not only agricultural land but also eleven houses bearing Nos. 8-21-22, 8-23-21, 8-25-26, 8-27-28, 8-29-30, 8-31-32, 8-33-34, 8-35, 8-36 and 8-36A, which were part of the property given to her in the Will of Shri N. Saya Goud dated 2nd January, 1956. There is nothing on record to show what happened to the land in Survey No.602, which was purchased subsequently as the deed made reference only to the land in Survey No.291.

16. So far as the Will in favour of the plaintiffs dated 28th September, 1979, is concerned, it clearly reveals that Smt. N. Chandramma was the absolute owner of half share of the property and cannot be said to have had merely a life interest in the same. It also clearly reveals how a fraud had been committed on her earlier by her son Shri N. Balrajaiah Goud. The relevant portion of the Will reads as under:

“My husband had given equal rights to me and to my daughter-in-law through Will. According to this, I myself and my daughter-in-law Pentamma have joint rights over the properties purchased through sale deeds. My elder son Nemuri Bala Rajaiah has executed a document, pertaining to this, there is no any disturbance from it. With a condition that my daughter- in-law has to look after me during my life time, my life time rights has been given to her which I have come to know the same, that document is hereby not cancelled as per the advice, I have not tried for the same. My son Nemuri Bala Rajaiah, my daughter-in-law are not looking after me, I myself with my own free Will and consent have been staying with my younger son Nemuri Sathaiah.” (Emphasis added)

17. The document on record i.e. the Will dated 2.1.1956 had never been admitted as required under the law. Therefore, no fault can be found with the judgment impugned given by the High Court. Such a document cannot be taken on record. Even otherwise we have examined the said document and it makes it clear that the said document did not create only the life interest for Smt. Chandramma, rather it created equal rights for both the beneficiaries. More so, once the freehold rights had been acquired in the said property at a subsequent stage by the beneficiaries, Smt. Chandramma had a right to deal with half share of the said property in any manner she liked. The alleged deed executed by Smt. N. Chandramma in favour of Smt. N. Pentamma though a registered document, is not free from the doubt that it was not of her

free will as it provides that Smt. Chandamma was transferring only life interest. More so, the document contains large number of properties including eleven houses which had never been a subject matter of the Will dated 2.1.1956.

“The High Court has considered this document elaborately and held that there was substantial evidence of strong circumstances to indicate that it was written on the dictates of Balrajaiiah Goud and Smt. N. Pentamma by using undue influence on Chandamma. The recitals in the other documents do not reflect in the Release Deed, and therefore, the High Court held that the said document was not out of the free will and consent of Chandamma and it stood vitiated because of fraud and undue influence on her.”

18. The facts and circumstances of the case do not warrant review of the impugned judgment. All the petitions lack merit and are accordingly dismissed.

<sup>1</sup>(2008) 4 SCC 683