

ANDHRA PRADESH HIGH COURT

V. Lakshminarayana Sastry

Vs

V. Sitarama Sastry

(K.S Rao and J Reddy, JJ.)

10.09.1957

ORDER

K.S Rao, J.

1. This is a petition for leave to appeal to the Supreme Court against the judgment of the Madras High Court in A.S. No. 162 of 1947 on its file which, on the constitution of the Andhra High Court, has been transferred to this Court. The suit was filed for partition of ten items. The defendants pleaded that some items were not joint family properties, while some other items were sold jointly along with the plaintiff. The learned Subordinate Judge held that items 1 to 4 were not joint family properties, that half of the fifth item was in possession of the plaintiff, that the alienations of items 6 and 8 were binding on the plaintiff, that items 7 and 9 were acquired by the Government, that the plaintiff was entitled to half of the compensation amount, and that the plaintiff would be entitled to half the value of the site, item 10, which the learned Subordinate Judge valued as in 1928, when the site was purchased. The learned Judge dismissed the suit in respect of the superstructure. The plaintiff preferred an appeal against the judgment of the learned Subordinate Judge in so far as it went against him. The defendants filed cross-objections.

2. In the appeal, the Madras High Court held that the site (item 10) should be valued as in 1945 and not as in 1928 as the learned Subordinate Judge did. In regard to the compensation amount in respect of items 7 and 9, the trial Court had given interest from 1928, whereas the appellate Court gave interest only from 1945. In other respects, the appeal and the memorandum of objections were dismissed. In short, the decree of the trial Court was confirmed except in regard to interest on the compensation amount in respect of items 7 and 9 and the valuation of item 10. The modification in regard to item 10 was in favor of the petitioner and the modification in regard to items 7 and 9 was against him.

3. The petitioner in his appeal to the Supreme Court challenges the decree of the High Court in respect of items 1 to 4 and the superstructure an item 10. The modification of the first Court decree against the appellant was in respect of a sum of Rs. 400/- while that in favor of the

appellant was in respect of item 10. The decree of the lower court to that extent was, therefore, not one of affirmance. Item 10 is also the subject-matter of the appeal to the Supreme Court. The market value of item 10 including the superstructure was given in the plaint as a sum of Rs. 4000/-. It is not contended that the value of that item is more than Rs. 10,000/-.

If the valuation of items 1 to 4 also is taken into consideration, the value of the entire subject-matter would be more than Rs. 10,000/-. On those facts, the question is whether the appellant would be entitled to leave to appeal to the Supreme Court as a matter of right on the ground that the judgment was not one of affirmance and that the value of the subject-matter of the appeal was more than the prescribed amount. In support of this contention, the learned counsel for the petitioner placed reliance upon the decision of a Full Bench of the Madras High Court in *Subba Rao v. Chelamayya, (A). Rajamannar, C.J.*, who delivered the judgment of the Full Bench summarised the following principles at page 14 (of ILR Mad) : (at p. 774 of AIR), of the report :

"(1) If the judgment or decree of the High Court varies the decision of the lower court in respect of a matter in controversy in the proposed appeal to the Privy Council, then there is a right of appeal not only to the person against whom the variation has been made, but even to the party in whose favour the variation has been made. But it is necessary that the matter in respect of which there has been a variation should be the subject-matter of the proposed appeal to the Privy Council.

(2) A matter in controversy cannot be split up or analysed or dissected into component parts or arbitrary divisions. The true test will be to determine the nature of the dispute or controversy.

(3) If the matter in respect of which there has been a variation is not the subject matter of the proposed appeal, then such variation would not confer a right of appeal as regards matters unconnected with the matter in respect of which there has been a variation. Ex hypothesi, this will be the case when the variation has been completely in favour of the applicant."The Full Bench judgment is binding on us in view of the decision of a Full Bench of this Court in *Subbarayudu v. State of Andhra, (B)*. The first question is whether the matter in respect of which there is a variation is the subject matter of the proposed appeal to the Supreme Court. Item 10 in respect of which there was a variation in favour of the appellant is part of the subject-matter of the proposed appeal to the Supreme Court.

Following the Full Bench decision, we hold that, as the subject matter in respect of which, variation was made was the subject-matter of the proposed appeal, the decree was not one of affirmance within the meaning of Article 133 of the Constitution of India.

4. The next question is whether the amount or the value of the subject matter of the dispute in the court of the first instance and still in dispute on appeal was and is less than the prescribed amount. It is not disputed that the value of the subject-matter of the suit as well as that in dispute on appeal was and is more than the prescribed amount. But the contention is that, for the purpose of the appeal, the value of the item in respect whereof the modification was made is the criterion

but not that of the entire subject matter of the suit or the appeal. Whatever justification there may be for this contention in a case where the suit is comprised of different causes of actions and subject-matters which have been clubbed together on one or other of the permissible grounds laid down in the Civil Procedure Code, there is none in the present case. The plaintiff filed the suit for partition of the properties which he claimed to be joint family property. The entire subject-matter of the dispute, though it comprised of several items, is joint family property. The matter in controversy, therefore, relates to the alleged joint family properties and cannot be divided into component parts or arbitrary divisions. Items 1 to 4 and 10 were not alienated to third parties. The said items and the compensation paid by the Government in respect of items 7 and 9 were pooled together by the plaintiff as constituting the joint family property for the purpose of partition. The entire property comprised in these items, therefore, was the subject-matter of the dispute as well as that in the appeal. The contention raised by the defendants in respect of items 1 to 4 to the effect that they were not joint family properties is not of much relevance in considering the question of the value of the subject-matter of the suit, as well as that involved in the appeal. We, therefore, hold that items 1 to 10 were the subject-matter of the suit and that items 1, 4 and 10 were the subject-matter of the appeal. The value of the said subject-matter is more than the prescribed amount. The applicant has, therefore, complied with the conditions laid down in Article 133 of the Constitution of India and is, therefore, entitled as of right to appeal to the Supreme Court.

5. Leave is accordingly granted.