Bhogadi Kannababu & Ors vs Vuggina Pydamma & Ors on 12 May, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2403, 2006 (5) SCC 532, 2006 AIR SCW 3052, 2006 (5) SCALE 642, (2007) 1 MAD LW 811, (2007) 1 CIVLJ 85, (2006) 42 ALLINDCAS 15 (SC), 2006 ALL CJ 3 2144, 2006 (6) SRJ 236, (2006) 2 CLR 142 (SC), (2006) 2 MARRILJ 1, (2006) 3 JCR 101 (SC), 2006 (2) MARR LJ 1, (2006) 5 ANDH LT 39, (2006) 3 CIVILCOURTC 348, (2006) MATLR 550, (2006) 6 SCJ 414, (2006) 4 SUPREME 329, (2006) 3 RECCIVR 1, (2006) 5 SCALE 642, (2006) 64 ALL LR 142, (2006) 3 ALL WC 2652, (2006) 3 MAD LJ 105, MANU/SC/2687/2006, (2006) 1 RENCR 535, (2006) 102 CUT LT 301, (2006) 2 HINDULR 257, (2006) 2 WLC(SC)CVL 303, (2006) 2 CURCC 293, (2006) 6 BOM CR 214

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Bench: Arijit Pasayat, Tarun Chatterjee

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           CASE NO.:
Appeal (civil)  149 of 2004

PETITIONER:
Bhogadi Kannababu & Ors.

RESPONDENT:
Vuggina Pydamma & Ors.

DATE OF JUDGMENT: 12/05/2006

BENCH:
Arijit Pasayat & Tarun Chatterjee

JUDGMENT:
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J U D G M E N T TARUN CHATTERJEE, J.

One Shri Vuggina Suryanarayana was the owner of the following lands in vommali village of Madugula Mandalam of Vishakhapatnam district of Andhra Pradesh:

> 0.64 Acres in S. No. 77/1 1.46 Acres in S. No. 116/1 2.31 Acres in S. No. 117/1 3.06 Acres in S. No. 117/2

2.25 Acres in S. No. 117/5 1.13 Acres in S. No. 117/6 1.16 Acres in S. No. 117/9 1.19 Acres in S. No.

117/9 (hereinafter referred to as " the properties in question").

He died on 8th January 1972 leaving behind two widows, namely Chilakamma and Pydamma. Admittedly, the second marriage between Vuggina Suryanarayana and Pydamma had taken place during the subsistence of the first marriage of Vuggina Suryanarayana and Chilakamma. Out of the second marriage, two daughters, namely, Nukaratnam and Mahalakshmi were born. On 28th July 1973 the first wife of Vuggina Suryanarayana, Chilakamma, died issueless. According to Pydamma, on the death of Suryanarayana and Chilakamma the properties in question devolved on her and her two daughters, who are respondent Nos. 2 and 3 herein. Pydamma, had filed an application for eviction of the appellants under the Andhra Pradesh (Andhra Area) Tenancy Act 1956 (in short 'the A.P. Tenancy Act') before the District Munsif-cum-Special Officer, Madugula, A.P. on 18th September, 1990, which came to be registered as ATC 3/90, without making her daughters, being the respondent Nos.2 and 3 herein, as parties to the same. Pydamma in her eviction petition claimed eviction, inter-alia, on the grounds of default and sub- letting. It was also the case of Pydamma in her eviction petition that she had inducted the appellants as lessees in respect of the properties in question and after payment of rent for some time, the appellants had stopped paying, inter-alia, on the ground that they had inherited the properties in question on the death of the first wife of Surynanarayana, i.e. Chilkamma. In defence, the appellants pleaded that as they were the nephews of late Suryanarayana and as Suryanarayana had no issue out of his marriage with Chilkamma and as they were the only heirs and legal representatives of late Suryanarayana, being in actual physical possession and enjoyment of the properties in question owned by Suryanarayana since Chilakamma's death, in their own right, the eviction petition filed by Pydamma was not maintainable. They also pleaded that there was no relationship of landlord and tenant between Pydamma and them. The following issues were framed in the eviction petition:

> "(1) Whether Pydamma is the second wife of Suryanarayana and whether she succeeded the properties of late Suryanarayana and his first wife late Chilakamma ?
> (2) Whether there is any landlord and tenant relationship between Pydamma and the appellants in respect of the property in question ?

(3) Whether Pydamma is entitled to evict the appellants from the property in question and whether she is entitled to possession of the same ?"

> By a judgment and order dated 17th November 2000, the District Munsif-cum-Special Officer allowed the eviction petition filed by Pydamma holding that there existed landlord and tenant relationship between Pydamma and the appellants and that the appellants were liable to be evicted on the grounds of default and sub-letting under the A.P. Tenancy Act.
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> An appeal was carried by the appellants to the learned District Judge-cum-appellate authority, who allowed the appeal, holding that Pydamma did not acquire any right, title or interest to the properties in question as she could not be said to be a legally wedded wife in view of the admitted fact that her marriage with late Surayanarayana had taken place during the subsistence of the marriage of late Suryanarayana and

Chilkamma. Thus, it was held by the appellate authority that Pydamma was not entitled to evict the appellants from the properties in question as landlady of the appellants.

Feeling aggrieved by the judgment and order passed in the appeal, a civil revision petition was moved before the High Court challenging the aforesaid order of the appellate authority. During the pendency of the civil revision case filed under Article 227 of the Constitution, an application for impleadment was filed by the daughters, i.e. respondent Nos. 2 and 3 herein. It is true that an application for impleadment was filed by the daughters of Pydamma only after about 20 years and it is also an admitted fact that they did not approach either the trial court or the appellate court for their impleadment in the eviction petition in respect of the properties in question. By the impugned order, the High Court, while exercising power under Article 227 of the Constitution, inter- alia, held that the appellants were liable to be evicted on the grounds of sub-letting and non-payment of rent. It was also found that the appellants were inducted by Pydamma alone, in the properties in question although at the relevant point of time she did not acquire any right, title or interest in the properties in question on the death of the first wife, Chilkamma. On the date the civil revision case was allowed, the application for impleadment filed by the daughters of Pyadamma i.e. respondent Nos.2 and 3 was also allowed.

Two Special Leave Petitions were filed in this Court at the instance of the appellants, one against the main order passed in civil revision case and the other allowing the application for impleadment filed by the daughters, being respondent Nos.2 and 3 herein, under Order 1 Rule 10 of the Code of Civil Procedure. The Special Leave Petition filed against the order allowing the application under Order 1 Rule 10 of the CPC was, however, rejected in-limine by this Court.

The Special Leave Petition filed against the judgment and order passed in civil revision case was heard by us in presence of the learned counsel for the parties on grant of leave. Having heard the learned counsel for the parties, after going through the impugned order and other materials on record, including the order passed by this Court rejecting the Special Leave Petition filed against the order under Order 1 Rule 10 of the CPC and after careful consideration of the facts and circumstances of the present case, we are of the view that no ground has been made out to interfere with the impugned order directing eviction of the appellants. It was urged on behalf of the appellants that the respondents were not entitled to evict the appellants from the properties in question without there being a proof that on the death of Suryanarayana and Chilkamma the respondent Nos. 2 and 3 inherited the properties in question. It was further submitted that, in view of the finding made by the High Court that Pydamma was not entitled to inherit the properties in question on the death of Suryanarayana and Chilkamma, the question of passing a decree/order for eviction on the application filed by her could not arise at all.

So far as the first submission of the learned counsel for the appellants is concerned, it is on record that the application for impleadment was allowed by the High Court which was affirmed by this Court by rejecting a Special Leave Petition, which relates to impleadment of respondent Nos. 2 and 3 in the revision case. In an application for impleadment under Order 1 Rule 10 of the Code of Civil Procedure, the only question that needs to be decided is whether the presence of the applicant before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the proceedings. Therefore, according to the learned counsel for the appellants, even if the respondent Nos. 2 and 3 were added as parties, but by such addition it cannot be said that they were also entitled to succeed to the properties in question of late Suryanarayana and therefore entitled to evict the appellants.

It is true, as noted herein above, that in an application for impleadment under Order 1 Rule 10 of CPC, the Court would only decide whether the presence of the applicant before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the proceedings. But in the facts and circumstances of the present case, we are of the view that the question of strict proof whether respondents 2 and 3 were also entitled to evict the appellants from the properties in question may not be germane for decision of this case. It is an admitted position that respondents 2 and 3 were born out of the wedlock of late Suryanarayana and Pydamma during the subsistence of the marriage between Suryanarayana and Chilakamma. Even assuming, the marriage between late Suryanarayana and Pydamma cannot be treated as a valid marriage because of the subsistence of the marriage between late Suryanarayana and Chilakamma, considering the fact that respondents 2 and 3 were born out of the marriage between Suryanarayana and Pydamma, they would be entitled to succeed to the properties on the death of Suryanarayana and Chilakamma.

In this connection, we may consider certain provisions of the Hindu Marriage Act, 1955 (in short 'the Act').

Section 5 of the Act clearly states the grounds when the marriage cannot be solemnized. Clause (i) of Section 5 is one such condition, which clearly provides that no marriage can be performed if there is a living spouse. Therefore, in view of Section 5, the marriage between Suryanarayana and Pydamma cannot be considered to be legal as at the time of such marriage, Chilakamma was very much alive. Section 11 of the Act, which deals with a void marriage says that any marriage solemnized after the commencement of this Act shall be null and void if it contravenes any of the conditions specified in Clause (i), (iv) and (v) of Section 5 of the Act. Therefore, in view of Sections 5 and 11 of the Act, it must be held that the marriage between Suryanarayana and Pydamma is a void marriage as the said marriage was admittedly solemnized after the commencement of the Act. Therefore, considering that the marriage between Suryanarayana and Pydamma was a void marriage, the question

that would now arise is whether their daughters, namely, respondents 2 and 3 were entitled to inherit the properties in question, with the first wife, Chilakamma, on the death of Suryanarayana. In this connection, we may refer to Section 16 of the Act. Section 16 of the Act deals with legitimacy of children of void and voidable marriages. Sub-section (1) of Section 16 of the Act clearly says that notwithstanding that the marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate. (Emphasis supplied). Therefore, in view of section 16, it is clear that the daughters, namely, respondents 2 and 3 inherited the properties in question, along with Chilakamma, on Suryanarayana's death. Accordingly, the High Court was justified in holding that on the death of Suryanarayana, the properties in question were inherited by his daughters, namely, respondents 2 and 3, along with Chilakamma and therefore were entitled to evict the appellants from the properties in question along with Pydamma. Accordingly, the findings of the High Court on the question whether respondents 2 and 3 were entitled to inherit the properties in question of late Suryanarayana jointly with Chilakkama cannot be interfered with. That apart, in an application for eviction under the A.P.Tenancy Act in which prayer for grant of eviction of a lessee was made, it would not be necessary to decide that the daughters, respondent Nos. 2 and 3 comprehensively had to prove that on the death of Suryanarayana and Chilakamma, they were entitled to inherit the properties in question in the eviction proceedings. Therefore, it is not necessary to finally adjudicate upon the question of right, title and interest of the daughters with respect to the properties in question, which may be done in a comprehensive suit for title.

Let us now come back to the other question i.e. whether an eviction proceeding could be maintained by Pydamma, respondent No.1 herein, against the appellants, even if she was not found entitled to inherit the properties of late Suryanarayana.

The High Court in its judgment held that although Pydamma was not entitled to inherit the properties of Suryanarayana then also she was entitled to maintain eviction proceeding and obtain a decree/order for eviction under the A.P. Tenancy Act. The High Court in its impugned judgment held that only respondents 2 and 3 were entitled to succeed the properties in question and accordingly modified the findings of the Special Officer and the appellate authority holding that the daughters of late Suryanarayana who were the respondents 2 and 3 were entitled to succeed the properties of late Suryanarayana but not Pydamma. However, the High Court in its impugned judgment directed the eviction of the appellants not only in favour of Pydamma, the original applicant, but also in favour of respondents 2 and 3. In the impugned order, the High Court held that it was Pydamma, respondent No.1, who had inducted the appellants in the properties in question and it was also the finding of the High Court and also the trial court that the appellants continued to pay rent in respect of the properties in question for some period and thereafter stopped payment. On such findings, the High Court held that it was not open to the appellants to deny the title of properties in question of Pydamma in view of Section 116 of the

Evidence Act. In the case of Bilas Kunwar v. Desraj Ranjit Singh, (AIR 1915 Privy Council at p. 98), the Privy Council observed as follows:

"A tenant who has been let into possession cannot deny his landlords title, however, defective it may be, so long as he has not openly restored possession by surrender to his landlord." (Emphasis supplied).

This view was also recognized by this Court in Atyam Veerraju and others Vs. Pechetti Venkanna and others [AIR 1966 SC 629]. Similar view has also been expressed in a later decision of this Court in the case of Tej Bhan Madan Vs. II Additional District Judge and Ors. [(1988) 3 SCC 137] in which it was held that a tenant was precluded from denying the title of the landlady on the general principles of estoppel between landlord and tenant. It was held that the principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. In our view, Section 116 of the Evidence Act is clearly applicable in the present case, as held by the High Court in the impugned order. The finding of fact of the High Court and the trial court that the appellants were let into possession by Pydamma and that possession was not restored to her by surrender, was based on consideration of material evidence on record, which cannot be disturbed by us. Therefore, in our view, even if respondent No.1, Pydamma, was not entitled to inherit the properties in question of late Suryanarayana then also she could maintain the application for eviction and obtain a decree/order of eviction on the ground of default and sub-letting under the A.P. Tenancy Act. We keep it on record that the learned counsel appearing for the appellants did not raise any objection on the findings of the High Court regarding default and sub- letting, before us.

In this connection, we may also point out that in an eviction petition filed on the ground of sub-letting and default, the court needs to decide whether relationship of landlord and tenant exists and not the question of title to the properties in question, which may be incidentally gone into, but cannot be decided finally in the eviction proceeding.

In this view of the matter and in view of the discussions made herein above, we are of the view that the eviction petition filed by respondent No.1 was maintainable in law and respondent No.1 was also entitled to obtain a decree/order of eviction. It is, however, made clear that the right of inheritance of the respondents to the properties in question has not been decided in the present proceedings. Any observation or findings in this judgment cannot be construed as final findings as to such right. For the reasons aforesaid, the appeal stands dismissed. There will be no order as to costs.

However, the decree/order for eviction shall not be executed by the respondents for a period of 6 months from this date if, within a month from this date, the appellants file an undertaking to this Court that they shall deliver peaceful and vacant

possession of the properties in question to the respondents. In default of filing the undertaking, the decree/order of eviction shall be executed forthwith.