Supreme Court of India

M. Arthur Paul Ratna Raju And Ors. vs Gudese Garaline Augusta ... on 31 March, 1998

Equivalent citations: AIR 1999 SC 2633, (1999) 121 PLR 470, (1998) 7 SCC 103

Bench: G Ray, M Srinivasan

ORDER

1. Substitution is allowed if not allowed by previous order.

2. This appeal is directed against the judgment dated 6-11-1985 passed by the Andhra Pradesh High Court in Letters Patent Appeal No. 70 of 1979. Defendants 2 to 7 in the partition suit OS No. 70 of 1970 are the appellants before us. Respondent 1 filed the said OS No. 70 of 1970 in the Court of learned Subordinate Judge, Tanuku for partition of B and C Schedule properties, inter alia, contending that she had inherited the share in the said B and C Schedule properties through Karunamma who was the daughter of Mark, the admitted owner of the property. The said Respondent 1 also claimed title to the said property under a Will executed by her mother Karunamma. The contesting Defendants 2 to 7 who are appellants before this Court, filed a written statement, inter alia, disputing the claim of the plaintiff. It was inter alia contended by the said contesting defendants that the Will executed by Karunamma was not a valid one. In any event, the plaintiff lost her title to the said property because of adverse possession exercised by Defendants 2 to 7.

3. The trial court did not accept the validity of the Will but decreed the suit in part by accepting the title of the plaintiff in respect of C Schedule property, namely, the house property. The plaintiff thereafter preferred an appeal being AS No. 564 of 1975 against the said judgment of the learned Subordinate Judge. The Single Bench of the High Court allowed the said appeal inter alia on the finding that the Will set up by the first respondent is valid. It was also held that the appellants, namely, Defendants 2 to 7 did not acquire title to the suit property by adverse possession. Thereafter, Defendants 2 to 7 preferred LPA No. 70 of 1979 in the High Court. By the impugned judgment, such LPA has also been dismissed.

4. It has already been indicated that there is no dispute that one Mark was the owner of the disputed property and Respondent 1, the plaintiff had been claiming title through her mother Karunamma being the daughter of Mark. It is also not in dispute that Mark died leaving behind his son Joseph, daughter Karunamma and widow Morthamma. There is also no dispute that after the death of Morthamma her interest in the property left by Mark devolved equally on the son Joseph and the daughter Karunamma.

5. Defendants 2 to 7 being the co-sharers cannot succeed in claiming absolute title by adverse possession unless it is established by convincing evidence that there had been ouster of Respondent 1, an admitted co-sharer from the disputed property. In the case of a co-sharer, mere exercise of possession as of right, cannot make out a case of ouster of co-sharer and consequential exercise of adverse possession by the other co-sharer so that ultimately the title of the ousted co-sharer is extinguished on account of adverse possession for the prescribed period.

6. In the facts and circumstances of the case, the court of appeal below has rightly indicated that such case has not been established by the appellants and the LPA has also been dismissed. Therefore, the appellants cannot succeed in this appeal. The question whether the Will was genuine or not has also been answered against the appellants and we do not find any reason to interfere with such finding made by the Single Bench of the High Court since upheld by the Division Bench. It may be stated here that whether the Will is valid or not loses its significance because the plaintiff's title through Karunamma even by intestate succession has been established. The present defendants have no concern with the Will and title to the property of Karunamma by testamentary succession through the Will concerns the natural heirs of Karunamma and the legatees under the Will. This appeal therefore fails and is dismissed. There will be no order as to costs.