

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL Nos.106 OF 1998

&

388 OF 1998

Dated 25-3-2015

SECOND APPEAL No.106 OF 1998.

Between:

K.Narayanaswamy (died) and others.

...Appellants.

And:

G.Narasimha alias G.Narasaiah and others.

...Respondents.

SECOND APPEAL No.388 OF 1998

Between:

G.Narasimha alias G.Narasaiah (died) and others.

...Appellants.

And:

K.Narayana Swamy (died) and others.

...Respondents.

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COMMON JUDGMENT:

These two appeals are preferred challenging judgment dated 20-11-1997 in A.S.No.44 of 1991 on the file of First Additional Chief Judge,

City Civil Court, Secunderabad.

A.S.No.44 of 1991 is preferred by D.3 challenging judgment dated 30-3-1991 in O.S.No.1640 of 1983 on the file of XI Assistant Judge, City Civil Court, Secunderabad.

Parties are hereinafter referred to as “plaintiff and defendant” as arrayed in the suit for the sake of convenience and better understanding.

Trial court granted specific performance decree directing the defendant to execute sale deed in favour of plaintiff on the condition that plaintiff shall deposit a sum of Rs.359/- within two months in the office of second defendant and challenging that decree, D.3 preferred appeal and the appellate judge allowed the appeal in part granting recovery of possession to the plaintiff from D.3 but refused the relief of specific performance and also refused the relief of executing any lease deed in favour of plaintiff and further held that sale deed in favour of D.3 is null and void and aggrieved by the same, plaintiff preferred appeal No.388 of 1998 and D.3 preferred appeal S.A.No.106 of 1998.

During the pendency of these appeals plaintiff died and his L.R. was brought on record as second plaintiff as per orders dated 23-6-2006 in S.A.C.M.P.No.1366 of 2006. So also, first respondent died and his L.Rs.were brought on record as R.4 to R.7 as per the orders dated 13-8-2002 in S.A.C.M.P.No.25781 of 1999 in Second Appeal No.388 of 1998.

In Second Appeal NO.106 of 1998, appellant died and L.Rs. of appellant were brought on record as appellants 2 to 5 as per order dated 11-7-2003 in S.A.C.M.P.No.2058 of 2003. But the L.Rs. of first respondent i.e., plaintiff are not brought on record.

Plaintiff filed O.S.No.1640 of 1983 contending that he has been residing in house No.25/D, new house No.6-5-130, Municipal Blocks, New Boiguda, Secunderabad since his childhood and when the second defendant decided to sell the Municipal Block in new Boiguda, Secunderabad on hire purchase system, accommodated tenants to pay lease amount in installments and that the plaintiff is one of such allottees of block No.25/D under hire purchase system and he paid most of the sale consideration and as he was working, he let out the premises to D.3 by keeping one room in his possession but the tenant failed to pay monthly rent from January, 1982 onwards but plaintiff came to know that D.3 managed in the office of second defendant and obtained a sale deed in his name on 9-9-1982 and that made the plaintiff to file the suit for specific performance of agreement of sale, and for cancellation of sale deed dated 9-9-1982

besides recovery of possession.

Only D.3 contested the suit and according to D.3, plaintiff deliberately suppressed the fact of his employment and gave wrong name and no person by name 'G.Narasimha' is in occupation of property. He denied allotment of property to the plaintiff on hire basis by second defendant. He also denied the allegation that a portion of the property was leased out to him by plaintiff. He contended that he is the absolute owner of the property having purchased the same from second defendant through registered sale deed dated 9-9-1982 and that the plaintiff has no right over the suit schedule property and not entitled for the reliefs claimed.

On these contentions, trial court framed appropriate issues and examined five witnesses and marked seventy documents on behalf of plaintiff and examined one witness and marked 13 documents on behalf of contesting defendant besides marking Ex.X.1 and on an overall consideration of oral and documentary evidence, decreed the suit in favour of plaintiff.

Heard both sides.

Plaintiff contended the following grounds as substantial questions of law.

*(a) Whether the plaintiff is not entitled for execution of sale deed, when the original owner has not denied the allotment in favour of the plaintiff and when the court itself directed delivery of possession in his favour.*

*(b) Whether the title can be denied at the instance of tenant, when the original owner had not denied the allotment, basing on which the land-lord is entitled for execution of a document by the original owner.*

D.3 contended the following grounds as substantial questions of law.

*1. Whether the lower appellate court, after having found that plaintiff is not entitled for specific performance or even to get a lease from the Municipal Corporation justified in holding that plaintiff is entitled for recovery of possession.*

*2. Whether the lower appellate court after having found that plaintiff did not establish his identity as the original*

*allottee justified in holding that plaintiff is entitled for recovery of possession.*

*3. Whether the lower appellate court's finding that plaintiff is entitled for recovery of possession especially in the absence of any transfer of property in his favour is sustainable in law, more so, when Municipal Corporation of Hyderabad, is statutory authority executed a registered sale deed in favour of the appellant herein.*

*4. Whether the lower appellate court is justified in coming to wrong conclusions from proved facts.*

*5. Whether the finding of the lower appellate court is vitiated by non-appreciation of material evidence on record.*

Now the point that would arise for my consideration in these two second appeals is whether there are any substantial questions of law to be considered by this court.

POINT:

According to plaintiff, a scheme was formulated in the year 1964 by D.2 to sell its buildings for the tenants in occupation under hire purchase scheme and the plaintiff entered into an agreement with D.2 and paid the entire sale consideration leaving a balance of Rs.359/- and that he extended building by constructing two more rooms and that the western portion was given to D.3 on a rent of Rs.25/- per month in the year 1970. But D.3 managed the municipal authorities and got a sale deed executed in his favour on 9-9-1982 and this could be realized only after D.3 discontinued payment of rent.

He further submitted that trial court on an elaborate appreciation of evidence granted decree in favour of plaintiff but the appellate judge erroneously disturbed such findings and cancelled the specific performance decree in favour of plaintiff but ordered for delivery of possession. He further submitted that D.3 attributed impersonation to plaintiff and the same was not accepted by trial court but held it is only a misrepresentation but not impersonation and the appellate court also accepted that finding but refused specific performance which is not proper. He further submitted that the appellate court having held that the transfer in favour of D.3 is null and void, ought to have decreed the suit in favour of plaintiff.

I have perused the entire material including judgments of both the courts. Lower appellate court has specifically framed point for consideration whether the plaintiff and the person referred in Ex.A.1 are one and the same. Admittedly, the claim of plaintiff is based on Ex.A.1 which is in the name of one G.Narasaiah said to be tenant of block 25/D, New Boiguda. The entire record shows that the said Narasaiah submitted application to D.2 which was considered and allowed him to purchase property under hire purchase scheme. Here the plaintiff is described himself as G.Narasimham son of Narasiah. Learned appellate judge by appreciating evidence of P.W.1 with reference to documents Exs.A.50, A.52 and A.53 held that plaintiff failed to prove that he is G.Narasaiah as mentioned in Ex.A.1. That finding is a factual aspect and the appellate court on elaborate discussion and examination of the material gave such finding. In fact, even the trial court also to some extent went on those lines but it failed to examine whether the person holding Ex.A.1 and plaintiff are one and the same person or different persons. It is further clear from the material on record, that D.2 without cancellation of Ex.A.1 executed Ex.B.11 in favour of D.3. From the evidence, it is clear that D.3 was inducted into possession by plaintiff into suit schedule property as a tenant and considering these aspects, appellate judge granted decree for possession but observed that plaintiff is not entitled for specific performance as he failed to prove that he is the same person in whose favour Ex.A.1 was executed but granted decree of possession as he was found to be in possession of property from 1964 and D.3 was inducted into possession by plaintiff. So, the entire submissions and the grounds urged as substantial question of law are only on factual aspects and appreciation of evidence and no question of law is involved in these two appeals. Findings of the appellate judge are based on material on record and there is no perversity in any of the findings of the appellate court.

For these reasons, I am of the view that there is no question of law involved in these two appeals much less substantial question of law and all the grounds urged in both the appeals are in respect of factual findings and therefore, there are no merits in the appeals. So far as Second Appeal No.106 of 1998 is concerned, as the L.Rs. of deceased plaintiff were not brought on record, appeal has to be dismissed against the plaintiff who is first respondent in S.A.No.106 of 1998 as abated and in so far as other respondents are concerned, the appeal is devoid of merits.

Accordingly, both the Second Appeals are dismissed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

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JUSTICE S.RAVI KUMAR

Dated 25-3-2015.

Dvs

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