

HON'BLE SRI JUSTICE A.V. SESA SAI

SECOND APPEAL No.1670 of 2011

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Date: March 03, 2015

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Between:

1. Sagaram Laxmi & 2 others.

...

Petitioners

And

Vadloori Vijaya.

...

Respondent

* * *

HON'BLE SRI JUSTICE A.V. SESA SAI

SECOND APPEAL No.1670 of 2011

J U D G M E N T:

Defendants in O.S.No.21 of 2007 on the file of the Court of the Senior Civil Judge, Siricilla, are the appellants in the present second appeal filed under Section 100 of the Code of Civil Procedure (for brevity 'CPC').

2. This second appeal is directed against the judgment and decree dated 05.09.2011 rendered by the Court of the Principal District Judge, Karimnagar, in A.S.No.44 of 2009, confirming the judgment and decree dated 19.08.2009 passed by

the learned Senior Civil Judge, Siricilla, in O.S.No.21 of 2007.

3. The circumstances, in nut-shell, leading to filing of the second appeal are as follows:

The respondent herein instituted O.S.No.21 of 2007 on the file of the Court of the Senior Civil Judge, Siricilla, for partition of the plaint schedule property and also for a declaration that the registered gift deed dated 13.12.2006 executed by the second defendant in favour of the 3rd defendant would not bind her.

4. The defendants/appellants herein filed written statement, resisting the suit.

5. Based on the pleadings available on record the learned Senior Civil Judge, Siricilla, framed the following issues for trial:

- (1) Whether Sagaram Chandraiah executed a Will deed dated 30.08.1989; thereby bequeathed the tiled house to D2? If so, is the Will deed is valid and binding on the plaintiff?
- (2) Whether D2 constructed R.C.C. house by removing tiled house in the year 1998?
- (3) Whether the plaintiff is out of possession

of the suit property and liable to pay court fee u/s.34 (1) of A.P.C.F & S.V. Act?

(4) Whether the plaintiff is entitled for partition and separate possession as prayed for?

(5) Whether the plaintiff is entitled for declaration of gift deed dated 13.12.2006 is null and void and not binding on her?

(6) Relief?

6. During the course of trial, plaintiff herself examined as P.W.1 and also examined P.W.2 on her behalf and marked Exs.A-1 to A-6. On the other hand, on behalf of the defendants, D-1 and D-2 were examined as D.W.2 and D.W.1 respectively and D.Ws.3 to 7 were also examined. In order to substantiate their case defendants marked Exs.B-1 to B-15.

7. The learned Senior Civil Judge, Siricilla, after full-fledged trial and enquiry decreed the suit on 19.08.2009, directing division of the plaint schedule property into three equal shares and allotment of one such share equally to the plaintiff, first defendant and the 2nd defendant. The learned

Senior Civil Judge also declared Ex.B-13 gift deed dated 13.12.2006 as null and void and not binding on the plaintiff and the first defendant to the extent of their 1/3rd share each.

8. As against the said judgment and decree of the learned Senior Civil Judge, Siricilla, the defendants/appellants herein preferred A.S.No.44 of 2009 on the file of the Court of the Principal District Judge, Karimnagar.

9. The learned District Judge framed the following points for consideration in the said appeal preferred under Section 96 of the CPC:

- (1) Whether the Will dated 30.08.1989 said to have been executed by late Chandraiah in favour of defendant No.2 is valid and binding on the plaintiff?
- (2) Whether defendant No.2 constructed RCC building during the year 1998 by removing the old tiled house?
- (3) Whether the gift deed dated 13.12.2006 executed by defendant No.2 in favour of defendant No.3 is valid?
- (4) Whether the plaintiff is entitled for partition?

10. The learned Principal District Judge, by way

of judgment and decree dated 05.09.2011, dismissed the said appeal filed by the defendants/appellants herein, confirming the judgment and decree passed by the trial Court. Calling in question the validity and correctness of the said judgments and decrees rendered by the trial Court and lower appellate Court, the present second appeal has been filed by the defendants under Section 100 of the CPC.

11. Heard Sri G. Tuhin Kumar, learned counsel for the defendants/appellants and Sri P.V. Narayana Rao, learned counsel for the plaintiff/respondent herein.

12. It is contended by the learned counsel for the defendants/appellants herein that the judgments and decrees rendered by the courts below are erroneous, contrary to law, weight of evidence and probabilities of the case. It is also submitted by the learned counsel that the findings recorded by the trial Court as well as the lower appellate Court are not in conformity with the provisions of either Section 68 of the Indian Evidence Act or Section 63 of the Indian Succession Act. It is also argued by

the learned counsel that the findings recorded by the courts below are based on assumptions and presumptions and the courts below did not consider the oral and documentary evidence in proper perspective. It is also contended by the learned counsel that by examining D.W.3, one of the attestors of Ex.B-2 Will dated 30.08.1989, the defendants could successfully prove the due execution of the said document in accordance with the provisions of Section 63 of the Indian Succession Act, as such the findings recorded by the courts below are perverse and liable to be corrected by this Court under Section 100 of CPC.

13. To bolster his submissions and contentions, the learned counsel for the appellants placed reliance on the decisions in **Municipal Committee, Hoshiarpur V. Punjab State Electricity Board**^[1], **Hafazat Hussain V. Abdul Majeed**^[2], **Pentakota Satyanarayana V. Pentakota Seetharatnam**^[3], **Hardeep Kaur V. Malkiat Kaur**^[4] and **Rajasthan State TPT Corpn. and another V. Bajrang Lal**^[5].

14. On the contrary it is vehemently contended

by the learned counsel for the plaintiff/respondent herein that there is no illegality, nor perversity nor any material infirmity in the judgments rendered by the trial Court and the lower appellate Court as such intervention of this Court under Section 100 of CPC is not warranted. It is also argued by the learned counsel for the respondent that both the courts below, after thorough verification of the oral and documentary evidence, recorded the concurrent findings of fact and the said findings of fact are not amenable for any intervention of this Court under Section 100 of CPC. It is also contended that both the courts below concurrently found Ex.B-2 as not proved, as such the appellants herein are not entitled for any relief from this Court under Section 100 of CPC.

15. The learned counsel for the plaintiff also contends that since the defendants/appellants herein failed to prove the due execution of Ex.B-2 Will, the present second appeal is not maintainable. In support of his submission and contentions, the learned counsel for the respondent takes the support of the judgments in **Lalitaben Jayantilal Popat V . Pragnaben Jamnadas**

**Kataria^[6] and K. Vittal Rao and another V . S.K.
Laxmi Bai and others^[7] .**

16. In the light of the above background, now the issues that emerge for consideration of this Court under Section 100 of CPC are:

- (1) Whether the courts below are justified in granting relief in favour of the respondent herein?
- (2) Whether there are any substantial questions of law in the present second appeal for consideration under Section 100 of CPC?

17. The information available before this Court manifestly discloses that the plaintiff and the 2nd defendant are the sisters and the first defendant is their mother and defendant No.3 is the son of the 2nd defendant. The case of the plaintiff is that the plaintiff and the 2nd defendant are the daughters of one late Sri Sagaram Chandraiah. He owned the plaint schedule property and he died intestate in 1990, leaving behind him, the plaintiff and defendants 1 and 2 as sole legal heirs. It is the further case of the plaintiff that defendants 1 and 2

colluded together and managed to get the 2nd defendant recorded as owner of the property in the Gram Panchayat records by deleting the name of late Sagaram Chandraiah and the 2nd defendant also executed Ex.B-13 registered gift deed dated 13.12.2006 in favour of the 3rd defendant in respect of the schedule property. The plaintiff got issued Ex.A-4 legal notice dated 20.01.2007 for which the defendants gave Ex.A-6 reply dated 01.02.2007, denying the claim of the plaintiff.

18. On the other hand, it is the case of the defendants in their written statement that initially Sagaram Chandraiah owned the property which he purchased from one Bhoomaiah. It is also the case of the defendants that after marriage, the 2nd defendant settled at Vemulawada with her family for better livelihood and stayed with her parents in the plaint schedule property and the 2nd defendant looked after the welfare of her parents and having satisfied with her services, late Chandraiah bequeathed his house to her under Ex.B-2 Will dated 30.08.1989. It is also the case of the defendants that defendants 1 and 2 are residing in the said house after the death of Chandraiah in the

year 1987. The name of the 2nd defendant was also mutated in the Panchayat records and thereafter in the year 1998 the 2nd defendant removed the old house and constructed RCC building with her own money after obtaining permission from the Gram Panchayat. The defendants further averred in the written statement that the 2nd defendant gifted the plaint schedule property in favour of the 3rd defendant by way of Ex.B-13 registered gift deed dated 13.12.2006 and the Panchayat also mutated the name of the 3rd defendant in the Panchayat records and the 3rd defendant is the absolute owner of the property.

19. The pleadings on record candidly and manifestly disclose that there is absolutely no dispute with regard to the fact that originally Sri Sagaram Chandraiah owned the plaint schedule property and it is also an admitted reality that the plaintiff and 2nd defendant are the sisters and daughters of the said Chandraiah. The very foundation of the case of the defendants is Ex.B-2 Will said to have been executed by late Chandraiah in favour of the 2nd defendant who in turn executed

Ex.B-13 gift deed in favour of the 3rd defendant i.e., the son of the 2nd defendant. In order to prove the execution of Ex.B-2 Will dated 30.08.1989 the defendants examined one Metta Devanand, attestor as D.W.3. The learned Senior Civil Judge, Siricilla, after elaborately considering the oral and documentary evidence available on record and after taking into consideration various suspicious circumstances, refused to believe Ex.B-2 and eventually recorded a finding that there is absolutely no hesitation to hold that late Chandraiah did not execute Ex.B-2 Will dated 13.08.1989 and he did not bequeath the house property to the 2nd defendant and in categorical terms the trial Court found Ex.B-2 as invalid and not binding on the plaintiff. As against the judgment and decree rendered by the learned Senior Civil Judge, the defendants/appellants preferred A.S.No.44 of 2009 on the file of the Court of the Principal District Judge, Karimnagar. The learned Principal District Judge, after meticulously and thoroughly considering the every nook and cranny, refused to give any credence to Ex.B-2 and confirmed the findings recorded by the trial Court.

20. On thorough analysis of various aspects in the matter the learned Principal District Judge, Karimnagar, held against the defendants. It is a settled and well established proposition of law that unless a person claiming any right under a Will thoroughly and completely satisfies the necessary ingredients of Section 63 (c) of the Indian Succession Act, such person is not entitled for any relief from the Court basing on the Will. In the instant case, in the considered opinion of this Court, the defendants/appellants herein could not prove the due execution of Ex.B-2 Will in accordance with the provisions of Section 63 (c) of the Act.

21. In identical set of circumstances the Hon'ble Apex Court in **Lalitaben Jayantilal Popat V. Pragnaben Jamnadas Kataria** (6 supra) held against the persons, claiming under a Will. In this connection it is also relevant to refer to the judgment of this Court in **K. Vittal Rao and another V. S.K. Laxmi Bai and others** (7 supra) wherein this Court at paragraph 3 categorically held that truth or otherwise of the Will is purely a question of

fact based on assessment of evidence and circumstances together with probabilities of the case and it is purely a question of fact. While holding so, this Court refused to entertain the second appeal. In the present case, the trial Court as well as the lower appellate Court, after thorough consideration of various aspects and the suspicious circumstances, refused to believe Ex.B-2 Will. Therefore such finding of fact recorded by the trial Court as confirmed by the lower appellate Court, in view of the above precedent of this Court, cannot be interfered with. This Court also does not find any perversity in the findings recorded by the courts below nor the appellants are successful in pointing out the same. Therefore, in the facts and circumstances of the case the judgments on which the learned counsel for the appellants placed reliance would not render any assistance to the appellants herein. This Court also does not find any justification nor any reasons to meddle with the concurrent findings of fact recorded by the courts below.

22. For the aforesaid reasons, the second appeal is dismissed.

23. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No order as to costs.

A.V.SESHA SAI, J

Date: March 03, 2015.
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HON'BLE SRI JUSTICE A.V. SETHA SAI

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Date: March 03, 2015

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[\[1\]](#) (2010) 13 SCC 216
[\[2\]](#) (2001) 7 SCC 189
[\[3\]](#) (2005) 8 SCC 67
[\[4\]](#) (2012) 4 SCC 344
[\[5\]](#) 2014 (4) ALD 43(SC)
[\[6\]](#) AIR 2009 Supreme Court 1389
[\[7\]](#) 2013 (2) ALD 386