

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.742 of 1997

Date:12.06.2015

Between:

Yenumala Venkataramana
Reddy and another.

...Appellants.

AND

Mekala Rami Reddy and others.

...Respondents.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.742 of 1997

JUDGMENT:

This appeal is preferred against judgment dated 03-05-1997 in A.S.No.11/1996 on the file of Subordinate Judge (presently Senior Civil Judge), Piler whereunder judgment dated 30-07-1990 in O.S.No.34/1981 (O.S.No.896/1977 on the file of First Additional District Munsiff, Madanapally) on the file of District Munsif (presently

Junior Civil Judge), Piler is reversed.

2. Appellants herein are plaintiffs in the above referred O.S.No.34/81 and respondents herein are defendants and the parties are hereinafter referred to as plaintiffs and defendants as arrayed in the suit for convenience sake.

The suit was originally filed against three defendants for specific performance of agreement of sale dated 25-03-1977 executed by D1 and the brief facts leading to this appeal are as follows:-

First defendant sold plaint 'A' & 'B' schedule properties to plaintiffs for a sum of Rs.6,000/- and received an advance of Rs.4,500/- and agreed to receive balance sale consideration before 31-01-1978 and executed an agreement of sale with the same terms on 25-03-1977 and delivered possession of the said property to the plaintiffs with an understanding that plaintiffs shall loose the earnest amount in case plaintiffs violate any of the terms. According to plaintiffs, D1 sold away 'A' schedule property to D2 to deprive the rights of plaintiffs and D2 obtained sale deed for no value with notice of agreement in favour of the plaintiffs. Third defendant, who is the elder brother of second defendant is intending to purchase plaint 'B' schedule properties, therefore, the defendants have to be directed to execute regular sale deed jointly in favour of the plaintiffs.

3. Defendants filed separate written statements and according to D1, he never executed any agreement in favour

of plaintiffs and the suit agreement is a forged and fabricated document. He further contended that he sold 'A' schedule property to D2 through a registered sale deed dated 13-06-1977 for Rs.6,000/- and received cash and delivered possession to second defendant.

4. Second defendant contended that he is a bonafide purchaser for a valuable consideration and the suit agreement was brought into existence with an anti date in collusion with first defendant in order to deprive second defendant from enjoying the property and that there is no valid and enforceable agreement in favour of plaintiffs.

5. According to third defendant, he has no interest in the plaint schedule properties and he is unnecessarily impladed as a party and that the plaintiffs cannot claim any reliefs against him.

6. On these contentions, appropriate issues are framed and during trial, eight witnesses are examined and ten documents are marked on behalf of plaintiffs and six witnesses are examined and five documents are marked on behalf of defendants besides Exs.C1 & C2. On a over all consideration of oral and documentary evidence, trial Court decreed the suit directing D1 to execute a sale deed in favour of plaintiffs on receipt of balance sale consideration of Rs.1,500/- and directed D2 to join in execution in respect of 'A' schedule property and dismissed the suit against D3. Aggrieved by judgment and decree of the trial Court, D2

preferred appeal to the appellate Court i.e, Senior Civil Judge and the appellate Court, on a reappraisal of oral and documentary evidence, allowed the appeal by setting aside the decree granted in favour of D1 & D2. Aggrieved by the same, plaintiffs preferred present appeal contending that the following are the substantial questions of law that arise for consideration of this Court:-

“1. Whether the judgment and decree of the lower appellate Court in reversing the well considered judgment of the trial court and in dismissing the suit for specific performance is legally sustainable and is supported by evidence on record?

2. Whether the lower appellate Court acted legally in holding that the appeal filed by the 1st respondent is independently maintainable more so when the appeal filed the 1st defendant in the suit was dismissed as abated?

3. Whether the lower appellate Court acted legally in holding that the appeal filed by the 2nd respondent is not hit by the principles of resjudicata?

4. Whether the lower appellate court was right in holding that the appellate court has got the power to go into the findings against the 1st defendant even though his appeal against the judgment of the trial Court was dismissed as abated is legal?

5. Whether the reasoning of the lower appellate Court that the appeal filed by the 1st respondent is maintainable in law and the abatement of A.S.No.183/90 against Defendant No.1 does not stand in the way of this appeal is legally sustainable?

6. Whether the lower appellate Court was right in going

into the question of the validity of the agreement of sale executed by the 1st defendant in an appeal filed by the 2nd defendant is legal and valid?

7. Whether the finding of the lower appellate Court that the agreement of sale is not true valid and binding is legally sustainable and is supported by evidence on record?

8. Whether the lower appellate Court acted legally in throwing the burden of proof of on the plaintiff to show that the second defendant has not bonafide purchaser in the teeth of Section 19 (b) of the Specific Relief Act is legally sustainable?

9. Whether the finding of the lower appellate Court that the 1st respondent/2nd defendant is a bonafide purchaser in good faith without notice of the prior agreement of sale is legally sustainable and is supported by evidence on record?

10. Whether the lower appellate Court acted legally in giving a finding on issue Nos.2 & 3 on the basis of mere surmises and conjectures?

11. Whether the lower appellate Court legally in rejecting the evidence adduced on behalf of the plaintiff only on the ground that they are related to the plaintiff and co-owners to the suit property is legally sustainable?

12. Whether the lower appellate Court acted legally in holding that the sale consideration mentioned in the Ex.B2 sale deed and taking into consideration of the amount spent on non-judicial stamp paper is sufficient to hold that the document is not nominal is legally sustainable?

13. Whether the lower appellate court is right in holding that the appellants are not in possession of the property is legal and is supported by evidence on record?

14. Whether the lower appellate court acted legally in reversing the well considered judgment of the trial court and interfering with the discretionary relief of specific

performance granted by the trial Court.”

7. This Court admitted the second appeal treating grounds 1 to 6 as substantial questions of law.

8. Heard both sides.

9. Advocate for appellants submitted that the plaintiffs issued a legal notice dated 17-11-1977 calling upon defendants for execution of sale deed and a reply was given on behalf of D1 disputing execution and the trial Court, after considering the evidence of P.Ws.1 to 8 and documents marked on behalf of the plaintiffs, decreed the suit for specific performance and both D1 & D2 preferred separate appeals to the appellate Court and the appeal preferred by D1 in A.S.No.183/1990 was dismissed holding that the appeal is abated for not impleading L.Rs of the appellant. He submitted that the appeal filed by D2 was allowed and findings of the trial Court are reversed without proper appreciation of the material on record.

He submitted that on account of dismissal of appeal of D1, the decree of the trial Court in so far as D1 has to be treated as existing and the same would operate as *res judicata* so far as to the appeal preferred by D2 is concerned, therefore, the judgment of the appellate Court has to be set aside. He submitted that on account of dismissal of the appeal preferred by D1 and allowing the appeal preferred by D2, there would be two conflicting decrees.

10. Advocate for respondents submitted that *resjudicata* is not applicable and to support his argument, he relied on a decision of this Court in **Konejeti Radhakrishnaiah vs. Sree Seetharama Bhakatha Sanghea**^[1]. He further submitted that the appellate Court clearly held that the alleged agreement relied on by plaintiffs is a fabricated document and that finding would even binds the L.Rs of D1, because they are impleaded as parties to the appeal preferred by D2. He submitted that D1 is shown as third respondent in the appeal preferred by the second defendant and after death of D1, his L.Rs were impleaded as D4 to D12 and the appellate Court, after considering the material on record, gave a finding as to the genuineness of Ex.A1-sale agreement and the same binds on D1 and his L.Rs, therefore, the objection of the plaintiffs is not tenable.

11. Now the point that would arise for my consideration in this second appeal is whether the objection of the plaintiffs as to the maintainability is tenable or not and whether there is any substantial question of law that has to be determined by this Court?

12. **Point:-** The first and foremost objection of the appellants is when the appeal of D1 is dismissed as abated that judgment would operate as *rejudicata* for the appeal preferred by the second defendant, but the lower appellate

Court without considering the same, reversed the findings of the trial Court. This very same objection was raised before the learned appellate Judge, but Senior Civil Judge, Pileru considered the objection with reference to case law and overruled the objection of the plaintiffs and held that appeal was maintainable. Advocate for respondents referred to a Division Bench decision of this Court in **Konjejeti Radhakrishnaiah's Case (1 Supra)**, wherein the principle of *resjudicata* was considered and held as follows:-

"The principle of res judicata enunciated under Section 11 C.P.C., in its extended form, applies at the stage of appeals also. Broadly stated, if a trial Court has clubbed several suits and disposed of them through a common judgment, the aggrieved parties are under obligation to prefer appeals against all the decrees. Failure to file appeal against the decree in one suit, would result in a situation where the findings referable to that particular suit or other proceedings assume finality and since it was through a common judgment, the extended principle of res judicata gets attracted and bars the appeal filed against the common judgment, in so far as it related to other proceedings. However, if the proceedings commenced with the filing of only one suit, mere fact that at a later stage, the suit gave rise to several appeals and further appeal against the decrees in one such appeal was not filed or if filed, it failed, does not attract the principles of res judicata. In AIR 1953 SC 419, the Supreme Court held that the principle of res judicata or estoppels operates against the judgment and not decree. Uncertainly, if any, in this regard is put at rest by subsequent judgment of Supreme Court in 2004 (6) ALD 1 (SC). In that case, two appeals arose out of one suit and out of two appeals, two SLPs were filed. One of the S.L.Ps was dismissed for default. When the surviving appeal came up for hearing, it was pleaded that dismissal of the S.L.P. that arose out of the common judgment would operate as res judicata. Repelling that contention, the Supreme Court held, ".....we are unable to accept

the contention that an order dismissing a subsequent appeal for default can operate as res judicata in respect of an earlier appeal. Neither Section 11 C.P.C nor any principle derivable there from, would bar the appeal.....” Added to that, the dismissal of the L.P.A. filed by defendant Nos. 1 to 5 was not on merits, but on account of an impediment created by law. It was a circumstances, far less in its purport compared to the one of dismissal for default.”

13. From the above decision, it is clear that for the failure of one party, the rights of another party who consciously pursued his remedies cannot be thrown out. So as per the principle laid down in the above referred Division Bench decision, in all force would apply to the case on hand, therefore, the objection with regard to maintainability of the appeal preferred by D2 cannot be accepted.

14. Now coming to other grounds i.e., grounds 1 to 6 they are with reference to appreciation of evidence by the appellate Court on Ex.A1-sale agreement. Here, the first appellate Court, after an elaborate appraisal of the entire oral and documentary evidence, gave a finding that this Ex.A1 is a fabricated document. Learned appellate Judge has given reasons point wise supporting his conclusion as to the genuineness of Ex.A1-sale agreement. I have scrutinized the entire material including the disputed document-Ex.A1. I do not find any perversity in the findings of the appellate Court on any of the material aspects. One of the contentions of the appellants herein is that possession was delivered to them on the date of agreement itself, but the evidence on

record is contrary to the said version. There is absolutely no documentary evidence to support the version of plaintiffs with regard to possession. On the other hand, the documents are in favour of D2 who purchased the property under a registered sale deed marked as Ex.B2. As per the version of plaintiffs, both 'A' & 'B' schedule properties were agreed to sell for a consideration of Rs.6,000/-, but Ex.B2-sale deed disclose that only 'A' schedule property was sold for a sum of Rs.6,000/-. The time gap between Exs.A1 & B2 is hardly about three months. Another suspicious circumstance which was considered by the appellate Court was that the stamp used for Ex.A1 was of the year 1975, which lend support to the contention of D2 that this Ex.A1-document was brought into existence with an anti date, after sale of property to him. So as rightly pointed out by Advocate for respondents all these grounds are with reference to facts and there is no question of law involved much less substantial question of law. In a second appeal unless, the findings of Court below are perverse in nature, this Court cannot touch the factual aspects and as all the grounds urged are only on factual aspects, as the findings are not perverse on the other hand based on sound reasoning, I am of the view that there is no substantial question of law to be decided by this Court and accordingly, the appeal has to fail.

14. For these reasons, second appeal is dismissed, but under the circumstances without costs.

15. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:12.06.2015

mrh

[\[1\]](#) 2014 (6) ALD 317 (DB)