

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal Nos.607, 608, 609, 610, 611, 612, 613 and 614 of 2008

COMMON JUDGMENT:

These eight appeals under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful 2nd defendant are directed against the common judgment and decrees dated 19.02.2008 in A.S.Nos.50 of 2006, 53 of 2006, 47 of 2006, 48 of 2006, 49 of 2006, 46 of 2006, 51 of 2006 and 52 of 2006 passed by the learned I Additional District Judge, Adilabad. While allowing the said batch of appeals, the learned I Additional District Judge had set aside the common judgment and decrees dated 25.07.2006 in O.S.Nos.81 of 2003, 74 of 2003, 75 of 2003, 76 of 2003, 77 of 2003, 80 of 2003, 89 of 2003 and 105 of 2003 respectively and had decreed all the said suits.

2. In each of these appeals (except in SA.No.612 of 2008), the 2nd defendant is the appellant; the 1st respondent is the plaintiff; the State of Andhra Pradesh is the 2nd respondent/1st defendant. The State of Telangana represented by the District Collector, Adilabad is brought on record as the 3rd respondent, as per the orders of this Court. In SA.No.612 of 2008 the respondents 1 and 2 are the plaintiffs; the State of Andhra Pradesh is the 3rd respondent whereas the State of Telangana is brought on record as the 4th respondent. I have heard the submissions of the learned counsel for the appellant/2nd defendant and the learned counsel for the respondents/plaintiffs in all the suits. None appeared and no submissions were made on behalf of the official respondents in these appeals. I have perused the material record.

2.1 The parties in these appeals shall hereinafter be referred to as 'the plaintiff/s' and 'the appellant/2nd defendant' and 'the official respondents', for convenience and clarity.

3. At the time of admission of these second appeals, this Court had

formulated the common substantial question of law as follows:

“Whether the original owner is estopped from setting the suit land on the principle of equitable estoppel, apart from the question of adverse possession.”

(Reproduced verbatim)

4. To adjudicate the *lis and* to answer the substantial question of law, it is necessary to first summarise the pleadings and mention the chronology of events that lead to filing of these appeals.

5. The plaintiffs brought the batch of suits claiming ownership in respect of respective suit schedule plots in the land admeasuring Ac.0.27 guntas in Survey No.44 of Mavula village. The plaintiffs in some of the suits had claimed that they are the purchasers of their respective plots from the original owner. The plaintiffs in the remaining suits had claimed that they had purchased the respective plots from the purchasers who had in turn purchased from the original owner. Since the issue involved in all the suits is common, the suits were consolidated and joint trial was conducted by the trial Court. The plaintiffs in the suits were examined as PWs 1 to 8 and on their behalf, PW9 was also examined and exhibits A1 to A87 were marked on their side. On behalf of the defendants, DW1 was examined and exhibits B1 to B13 were marked. On merits, the trial court had dismissed all the suits. The first appeals preferred by the aggrieved plaintiffs were allowed by the court below. Therefore, the 2nd defendant is before this Court.

6. The case of the plaintiffs, which is common and which is relevant, in brief, is as follows:

One Nalla Bhuma Reddy of Savergaon was the owner and possessor of the land of an extent of Ac.0.27 guntas situated in Sy.No.44 and another extent of Ac.12.37 guntas of land in Sy.No.45/A. The 1st defendant had acquired the entire extent of land in Sy.No.45/A having had resort to the provisions of the Land Acquisition Act and compensation was paid to the said owner about 20 years prior to the suits. The above mentioned land in Survey No.44 is abutting National High way No.7 and the land bearing Sy.No.45/A

which was acquired is on the other side, i.e., towards East of the land in Survey No.44. Since the entire land in Sy.No.45/A was acquired, the land in Sy.No.44 has become unfit for cultivation. Therefore, said owner-Nalla Bhuma Reddy had laid out the said land into (15) house plots. The plaintiffs in O.S.No.76 of 2003 and 81 of 2003 had directly purchased their respective plots from Nalla Bhuma Reddy. The plaintiffs in the remaining suits had purchased their respective plots from the purchasers who had in turn purchased from Nalla Bhuma Reddy. All the plaintiffs had purchased their respective plots under registered sale deeds and had also obtained possession of their respective plots; and, all the plots were fenced with barbed wire fencing. While so, in the second week of November 2002, the 2nd defendant had removed the fencing and had encroached the plots of the plaintiffs in Sy.No.44. The 2nd defendant had further proceeded with the construction of a compound wall on the Western side of the property. Having come to know of the same, the plaintiffs had tried to stop the construction work. The 2nd defendant had overpowered them and had continued the construction of the compound wall. It is alleged at that time by the 2nd defendant that Nalla Bhuma Reddy had gifted the said land in Sy.No.44 to the 2nd defendant. In spite of the report lodged with the police, no action was taken. The 2nd defendant has no right, title, interest and possession over the plots of the plaintiffs. The possession of the 2nd defendant is unauthorised and illegal. The plaintiffs had got issued notices to the defendants and also the original owner calling upon them to vacate and deliver possession within two months from the date of the receipt of the said notices. A reply notice was given by the 2nd defendant alleging that Nalla Bhuma Reddy had gifted the said land in Sy.No.44 of Mavula village in the year 1983 and as such, the plaintiffs have no right over the suit land. However, Nalla Bhuma Reddy in his reply had denied the alleged gift and had confirmed the sale transactions in favour of the plaintiffs. The gift transaction being alleged by the 2nd defendant is false, baseless and untenable. The document, if any, is one created by the 2nd defendant to defeat the rights of the plaintiffs and is false

and does not bind the plaintiffs. Hence, the plaintiffs were constrained to bring the suits for declaration that they are the owners of the respective suit plots in the respective suits, which are situated in Survey No.44 of Mavula village and for recovery of the possession of the suit schedule property after evicting the defendants and their men and for mesne profits and costs.

7. The defence of the defendants as stated in the written statement is as follows:

Nalla Bhuma Reddy was the absolute owner and possessor of the two adjacent extents of lands, i.e., Ac.0.27 guntas in Survey No.44 and Ac.12.37 guntas in Sy.No.45/A of Mavula village. The land in Sy.No.45/A was acquired 20 years back by the 2nd defendant. The land in Sy.No.44 is abutting National High Way No.7 and the land in Sy.No.45/A is on the other side, i.e., towards East of the land bearing Sy.No.44. All the other material allegations in the plaint that the land in Sy.No.44 had become unfit for cultivation after acquisition of the land in Sy.No.45/A and that therefore, the said Nalla Bhuma Reddy had converted the said land in Sy.No.44 into 15 house plots and that the plaintiffs are the absolute owners having possession and interest in the said properties having purchased under various registered sale deeds are all false. The said original owner-Nalla Bhuma Reddy has not converted the land in Sy.No.44 into plots. Therefore, the question of execution of sale deeds in respect of various plots in favour of the plaintiffs either by Nalla Bhuma Reddy or by the purchasers from him does not arise. The said transactions are only paper transactions. Nalla Bhuma Reddy had given away the said Ac.0.27 guntas in Sy.No.44 at Mavula village in favour of the 2nd defendant. The said land was a small piece of land compared to Ac.12.37 guntas in Sy.No.45/A, which was acquired. Therefore, he had voluntarily gifted the said land on 02.04.1983 through a gift deed and pursuant to the said gift deed, the 2nd defendant is in peaceful possession and enjoyment of the said Ac.0.27 guntas in Sy.No.44 without any interruption; and, the possession of the defendant is also evident from the entries in the pahanies. When the original owner-Nalla Bhuma Reddy was

not in possession and is having no title after gifting the property on 02.04.1983 to the 2nd defendant, the question of his executing the sale deeds in respect of the plots in favour of the various plaintiffs and others and all the said purchasers acquiring title to the said plots does not arise for consideration. The allegation that the construction was made by the 2nd defendant is false. One S.Rajaiah having claimed to be a purchaser of one of the plots had filed O.S.No.74 of 2003 and had moved an application for injunction in I.A.No.128 of 2001. The said application was dismissed. After dismissal of the said injunction application, the 2nd defendant had started constructing the compound wall. The plaintiffs having watched the said proceedings had later brought the suits without being in possession and without having any right, title and interest in various suit plots. The documents obtained by the plaintiffs in the various suits are illegal, void and are also unenforceable in law. The plaintiffs are not entitled to any reliefs.

8. Based on the above pleadings, the trial Court had framed the following issues for trial:

1. Whether the plaintiffs are entitled to a decree declaring them as owners of the respective plots which were mentioned in the suit schedule properties made out of Sy.No.44 situated at Mavula village or not?
2. Whether the plaintiffs are entitled for delivery of possession of the suit schedule properties by evicting the defendants or not?
3. Whether the plaintiffs are entitle for mesne profits and costs of the suit or not?
4. To such other relief?

After full-fledged trial, the trial Court had dismissed all the suits. As already noted, the 1st appellate Court had allowed the appeals of the plaintiffs and had decreed their suits.

9. The learned counsel for the appellant/2nd defendant would contend as follows:

The original owner-Nalla Bhuma Reddy had executed exhibit B2-gift deed and parted with the ownership and possession of the land in an extent of Ac.0.27 guntas in Sy.No.44 in favour of the appellant. He is also examined as PW9. The court below ought to have seen that PW9 had admitted the execution of exhibit B2 and his signature on the said document. Under the said gift deed under exhibit B2, possession of the said land was also delivered to the appellant/2nd defendant. The trial Court had rendered a well considered judgment. The appellate Court had erroneously disbelieved the said document and had unnecessarily interfered with the decrees and well considered common judgment of the trial Court. Interference with the common judgment and decrees of the trial Court by the 1st appellate Court is unwarranted. The judgment of the Court below is perverse. The court below ought to have seen that from the date of the gift, the 2nd defendant/appellant is in possession and enjoyment and that the name of the 2nd defendant is entered in the revenue records and that the 2nd defendant had perfected title by adverse possession and that the revenue record also fortifies the contention that the 2nd defendant that it is in continuous possession. Therefore, the court below had erred in declaring the title of the plaintiffs in respect of the plots in the suits and in decreeing their suits as prayed for. None of the purchasers had paid taxes on the properties involved in the suits. The sale deeds being relied upon by the plaintiffs are nominal and the transactions are paper transactions. In order to have access to the land in Sy.No.45/A, which was acquired long time back, the transaction of gift exhibit B2 had taken place. All the suit plots in various suits formed part of Survey No.44 only. Once PW9 had gifted the property to the 2nd defendant, he had no manner of right, title and interest in the property to execute the sale deeds in favour of his vendees. The plaintiffs did not acquire any valid right, title and interest in the properties said to have been purchased by them, i.e., the plots in the various suits. The original owner and the plaintiffs, who claim title through him, are estopped by the principle enshrined in the doctrine of equitable estoppel.

10. On the other hand, the learned counsel for the plaintiffs while supporting the decrees and common judgment of the court below had submitted as follows: 'The Court below had recorded a finding of fact on proper appreciation of facts and evidence. The Court below having framed as many as four points for determination had answered all the relevant and contentious issues in favour of plaintiffs and had decreed all the suits. The Court below has rightly considered the evidence brought on record and had rightly set aside the decree and judgment of the trial court. The court below had recorded a finding that exhibit B2 was originally executed in respect of the land acquired, i.e., the land in Sy.No.45/A and that the entry in regard to the land in Sy.No.44 was added in that letter by interpolation and that exhibit B2 is not genuine and that the alleged gift is not true, valid and binding and that any gift by way of an unregistered document does not confer any title on the 2nd defendant. There are no substantial questions of law involved in these second appeals and hence, the second appeals are liable to be dismissed. Exhibit B2 is not a gift deed and that the same is manipulated to knock away the property of the plaintiffs in Sy.No.44. Exhibit B2 has no legal sanctity and hence, for valid reasons, the court below disbelieved exhibit B2 and had categorically held that it is a manipulated document.

11. While answering the sole substantial question, it is to be examined as to whether the gift pleaded by the 2nd defendant is true, valid and binding on the plaintiffs; and if so, whether the original owner-Nalla Bhuma Reddy having validly gifted the land in an extent of Ac.0.27 guntas in Sy.No.44 to the 2nd defendant on 02.04.1983 is estopped from contending that he had converted the land into 15 plots and sold the same subsequently to various purchasers; and, whether the 2nd defendant established that it perfected title by adverse possession; and, if so, whether the plaintiffs are to be non-suited.

11.1 A reading of the substantial question framed would disclose that the said question is not even a pure question of law, let alone substantial question of law. Be that as it may. I have carefully gone through the pleadings and the evidence brought on record. I have noted the

submissions.

11.2 The plaintiffs in the eight suits were examined as PWs 1 to 8; and, in their respective testimonies, they had asserted their pleaded cases and maintained their pleaded stands in their cross examinations. Their sale deeds are exhibited as exhibits A1, A9, A10, A18, A19, A34 to 37, A49, A50, A58, A59, A68 and A76 to A78. PW9 is the original owner. PW1 had purchased plot No.15; PW2 had purchased Plot No.3; PW3 had purchased Plot No.7. According to PW3, he had purchased from one Akbar Ali, who in turn had purchased the same from PW9 long time back. The sale deed in favour of PW3 is dated 28.8.1993 and the transaction in favour of his vendor took place on 01.08.1985. PW4 claims to have purchased Plot No.5 from one Alluri Kalchap Reddy, who in turn had purchased the same from G.Ramlal; he had in turn purchased the same from PW9. PW5 claims ownership of Plot No.8; He had purchased the said plot from Bhagwan Das Shyamlal who in turn had purchased it from PW9. He had exhibited A49 and A50; PW6 claims title in respect of Plot No.13. She claims to have purchased it from B.Narayanamma who in turn had purchased from PW9 under exhibit A68; PW8 claims plot No.4 having purchased in the year 2001 from Alluri Kalchap Reddy who in turn had purchased from one Gangadhar; he in turn had purchased in the year 1985 from the original owner, PW9-Nalla Bhuma Reddy. All the plaintiffs in one voice had affirmed that they are the owners and possessors of their respective plots and they were enjoying their respective plots till they were dispossessed by the 2nd defendant in the circumstances stated in the plaint and in their testimonies. Both the parties admit that PW9 is the original owner of the property. He had testified that the land in Sy.No.45/A was acquired and that the present subject land in Sy.No.44 is adjacent to the said acquired land and that after acquisition of the land in Sy.Nos.45/A, he had retained possession of the land in Sy.No.44, which was not acquired, and that he had converted the said land in Sy.No.44 into plots about 20 years back and that he had sold the plots to different purchasers. He had thus resolutely supported the case of the plaintiffs in all respects. He had further denied the alleged gift said to have been made by

him in favour of the 2nd defendant and also the delivery of possession to the 2nd defendant. In his cross-examination, he had admitted that he did not obtain permission before converting his land in Sy.No.44 into residential plots. However, he had admitted his signature on the Photostat copy of the document dated 02.4.1983, the certified copy of which is marked as exhibit B2. He had also admitted that he had executed a letter in favour of the 2nd defendant in respect of land in Sy.No.45/A.

11.3 On the other hand, DW1 had stated that PW9 had gifted the land in an extent of Ac.0.27 guntas in Sy.No.44 by virtue of gift deed dated 02.04.1983 to the 2nd defendant. In his cross-examination, he had admitted that the land in Sy.No.44 is towards the South-West corner of Survey No.45/A and it was abutting the National High Way No.7 and that PW9 was the original owner of the lands in Sy.Nos.44 and 45/A and that the land in Sy.No.45/A was acquired and that the transaction under exhibit B2, gift deed in respect of Sy.No.44 was without any consideration and that exhibit B2 covers two extents of lands in Sy.Nos.44 and 45/A of Mavula village and that no panchanama was conducted at the time of handing over the possession of the land in Sy.No.44 at the time of the gift. He had denied the suggestion that exhibit B2 is not a gift deed.

11.4 PW9 is admittedly the owner of the land in an extent of Ac.0.27 guntas in Sy.No.44. The plaintiffs are claiming title in respect of their respective plots through PW9, the original owner. The only claim of the 2nd defendant is that the original owner PW9 had gifted the entire extent of Ac.0.27 guntas of land in sy.No.44 to the 2nd defendant by way of gift deed under exhibit B2 and that having so gifted the property and parted with his title and possession in favour of the 2nd defendant, the PW9 has no right to convert the land into plots and effect the sales and that the sales, if any, effected by PW9 are not valid in view of the fundamental principle that no one can convey a better title than what he actually has. Therefore, the core question is in regard to the genuineness and validity of exhibit B2 under which the 2nd defendant claims that PW9 had gifted the subject land in Survey No.44.

11.5 I have carefully perused exhibit B2 dated 02.04.1983. It was executed by PW9-the original owner; and, it is a letter addressed to the 2nd defendant, wherein, he stated that as requested by the 2nd defendant he is willing to give his own patta land and that the 2nd defendant can take the required extent out of his land as per the value determined by the Government and that he is therefore, surrendering the land in the above said survey number and that he and his legal representatives will not have any objection for the said course. The contents of the letter refer to the land in one survey number. There is no survey number and extent in the top portion of the said letter. However, at the end of the letter, i.e., above the signature of PW9, the details of the land are mentioned. The said entry contains the details of Ac.12.37 guntas in sy.No.45/A in regard to which there is no dispute. Above the said entry, there is also a mention of Ac.0.27 guntas in Sy.No.44 to indicate that the land in an extent of Ac.0.27 guntas in Sy.No.44 was also given. But, according to PW9 that letter was executed only in respect of land in Sy.No.45/A, which was admittedly acquired. The case of the plaintiffs is that the entry in regard to Ac.0.27 guntas in sy.No.44 was added subsequently above the original entry by interpolation to suit the defence of the 2nd defendant in the suit. A perusal of the said letter shows that the entry concerning Ac.0.27 guntas in Sy.No.44 was interpolated in the said letter, which was originally executed in respect of Ac.12.37 guntas in Sy.No.45/A which was admittedly acquired and in respect of which compensation was also paid by the Government to PW9. Admittedly, the land in Sy.No.44 of PW9 was not acquired and he had not agreed to give the said land and in respect of the said land, no compensation was paid as it was not acquired. Therefore, the question of mentioning the details of the land in Sy.No.44 in the letter does not arise as the letter corresponds to PW9's willingness to give the land at a rate fixed by the Government for the use of the 2nd defendant. The very conduct of the 2nd defendant in manipulating exhibit B2 letter would show the falsity of its defence. Further, there is no recital in exhibit B2 letter that the land in Sy.No.44 is gifted without any consideration. If exhibit B2 is perused and its

contents are examined keeping in view the context in which the exhibit B2 has come to be executed, its contents would lay bare that it was executed only in respect of the land in Sy.No.45/A, but the entry in regard to sy.no.44 was inserted subsequently in the said letter by manipulation under the said letter. that PW9 had agreed to hand over the land in Sy.No.45/A in an extent of Ac.12.37 guntas which may be acquired at a rate fixed by the Government. Moreover, an oral gift pleaded by the 2nd defendant without any registered document in its favour in respect of the land in Sy.No.44 is of no avail to advance the defence of the 2nd defendant that PW9 had gifted the land in Sy.No.44 to the 2nd defendant. When exhibit B2 was obviously executed in respect of the land in Sy.No.45/A, which was by then under proposal for acquisition, the question of mentioning in exhibit B2 about the land in an extent of Ac.0.27 guntas in Sy.No.44, which is not proposed for acquisition, does not arise and the gift of the said property by that time also does not arise, as by then, the acquisition proceedings are not finalised. It is not the case of the 2nd defendant that in anticipation of the acquisition of land in Sy.No.45/A, the land in Sy.No.44 was gifted by PW9 to the 2nd defendant. Exhibit B2, document does not contain a recital that the land in Sy.No.44 was gifted without any consideration and moreover, a mere mention of land of Ac.0.27 guntas in Sy.No.44 in the said letter, wherein, willingness for acquisition of land in Sy.No.45/A was expressed by PW9, does not convey valid title to the 2nd defendant in respect of the land in Sy.No.44 as the law is well settled that any transfer of property of the value of more than Rs.100/- by way of gift shall only be by a registered document. The provision of Section 123 of the Transfer of Property also ordains that a gift of movable property must be affected by registered instrument executed by the donor and attested by at least two attesting witnesses. Though exhibit B2 contains signatures of two witnesses, none of them was examined during the course of trial. Having regard to the evidence brought on record, the exhibit B2, by any standards, cannot be treated as a gift deed. The subject property was a vacant property and according to the version of the plaintiffs and the evidence of PW9, he had laid out the said property into plots and sold the same to various purchasers

including some of the plaintiffs. As already noted the plaintiffs had purchased their respective plots either from PW9 or the purchases from him. The suits for declaration of title and recovery of possession are based on registered sale deeds. The Court below had held after careful analysis of the evidence that the plaintiffs in the batch of suits had established their title in respect of their respective plots and that on the other hand, the 2nd defendant had neither pleaded nor established adverse possession. When once the respective titles to the respective plots of the plaintiffs are established and the 2nd defendant could not establish the right to remain in possession, the plaintiffs are entitled to the reliefs claimed in the suits. Having carefully examined the pleadings and the evidence, this Court is of the considered view that the well-considered findings of the Court below do not brook interference.

11.6 Viewed thus, this Court finds that there is no substance in the substantial question raised and in fact, the question raised is not even a question of law, let alone substantial question and that therefore, the appeals are devoid of merit and are liable for dismissal.

12. In the result, all the Second Appeals are dismissed. The defendants in all the suits are granted three months time from the date of the receipt of a copy of this common judgment to vacate and handover possession of the plaint schedule properties in the respective suits to the respective plaintiffs. On the failure of the defendants to do so, the plaintiffs in the suits shall be at liberty to obtain possessions of their respective plaint schedule properties by following the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in these appeals shall stand closed.

M. SEETHARAMA MURTI, J

14th August 2015
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