

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL No.413 of 2015

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JUDGMENT:

This appeal under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful defendant is directed against the decree and judgment dated 15.07.2011 of the learned III Additional District Judge (Judge, Fast Track Court), Ranga Reddy District passed in AS.No.106 of 2005. The learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 30.06.2005 of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar passed in OS.No.439 of 1997 filed by the sole plaintiff for declaration that the sale deed dated 31.05.1995 bearing document no.6820/95 executed by B. Ram Reddy and three others in favour of the defendant as illegal, void ab initio and unenforceable and for delivery of possession of the property and for mesne profits and for costs.

2. Be it noted that the sole plaintiff had died during the pendency of the first appeal and his legal representatives were brought on record as respondents 2 to 4/plaintiffs 2 to 4.

3 .I have heard the submissions of the learned senior counsel for the appellant/defendant ('the defendant, for brevity) and the learned counsel for the respondents 2 to 4/the legal representatives of the deceased sole plaintiff ('the plaintiffs', for brevity). I have perused the material record.

4. At the time of admission of this second appeal, the following substantial questions of law were formulated.

1. Whether the plaintiff's suit for recovery of possession of plaint schedule property without seeking the relief of declaration of title is maintainable?

2. Whether the decrees and judgments of the trial Court are erroneous and are vitiated for not considering the issue in regard to the maintainability of the suit?

5. To adjudicate the *lis* and answer the above-said substantial questions of law, it is

necessary to refer to the pleadings of the parties and the facts that lead to the filing of this second appeal by the defendant.

5.1 To begin with, the case of the sole plaintiff (since died), in brief, is this:

The plaintiff had purchased the plaint schedule property i.e., plot No.86 admeasuring 225 Square yards in Sy.Nos.38 to 41 of Chandanagar village, Rajendranagar Taluq from B. Ramachandra Reddy under a registered sale deed dated 12.04.1983 and the plaintiff has been in possession of the property since the date of the said purchase. He had mortgaged the property with the Andhra Bank, Koti Branch and had obtained educational loan to send his son to United States of America for higher education. Due to financial constraint, he did not undertake any construction activity and left the plot vacant. In May 1997 one of the close friends of the plaintiff had informed him that construction activities are being carried out in the schedule property by some third parties. Therefore, the plaintiff had visited the plaint schedule property and had questioned the defendant. The defendant did not produce any documents. The plaintiff had obtained an encumbrance certificate dated 16.06.1997 and had come to know that that one B. Ram Reddy and others had executed a sale deed in favour of the defendant on 31.05.1995 bearing document no.6820 of 1995. The plaintiff had then approached the Commissioner, Serilingampally Municipality with a representation dated 16.06.1997 and requested to stop the construction that was being illegally undertaken by the defendant. The plaintiff had obtained the certified copy of the sale deed executed by B. Ram Reddy and others in favour of the defendant on 31.05.1995. Though B. Sailaja, one of the vendors of the defendant and daughter of B. Ram Reddy was a minor, no permission was obtained from the District Court under the provisions of the Hindu Minority and Guardianship Act for the sale of the said property to the defendant and, hence, the said sale deed of the defendant is void. There is no mention in the sale deed of the defendant as to how the vendors of the defendant had acquired title to the property that was conveyed to the defendant. The sale deed of the plaintiff which was executed by Ramachandra Reddy was a prior sale deed and since the date of the said purchase in the year 1983, the plaintiff is in uninterrupted peaceful possession till the sale deed was executed by Ram Reddy and others in the year 1995 in favour of the defendant. The said Ram Reddy and others, who are the vendors of the defendant, have no manner of right, title and interest to execute the sale deed dated 31.05.1995 in favour of the defendant. The sale deed of the

defendant is void and hence the suit is filed for declaration that the said sale deed of the defendant dated 31.05.1995 is null and void and not binding on the plaintiff and for recovery of possession of the aforementioned plot i.e., the plaint schedule property.

2. The defence of the defendant, in brief, is this:

The material allegations in the plaint are false. The schedule property is the ancestral and joint family property of Rama Chandra Reddy and his sons and daughter. The sale made by Ramachandra Reddy alone, without the consent of the co-parceners, in favour of the plaintiff is not valid. The plaintiff is not in possession of the suit property at any point of time much less from the date of the alleged purchase. The plaintiff is not in possession of the property for over the statutory period. The alleged sale deed, if any, in favour of the plaintiff is a nominal document and it was brought into existence to enable the plaintiff to raise the bank loan. The defendant is not aware of the plaintiff obtaining educational loan by mortgaging the schedule property. The defendant with a view to have an independent house of his own had approached B. Ram Reddy and his family members and they having agreed to sell the suit property had accordingly sold the property to the defendant under sale deed dated 31.05.1995 for valuable consideration and had delivered possession of the property to the plaintiff; and, since the date of the said purchase, this defendant is in continuous possession to the knowledge of one and all for more than the statutory period of 12 years and without any interference either from the plaintiff or any other person. In the matter of sale of co-parcenary property of a Hindu joint family, no prior permission from the District Court to sell the minor's interest in the property is necessary and the kartha of the family can represent the minor and execute the sale deed. This defendant's sale deed is legal and valid. The rights of the plaintiff, if any, over the schedule land were extinguished due to lapse of time. The plaintiff is not entitled to seek cancellation of the sale deed. The defendant had obtained municipal permission and was proceeding with the construction. He had also obtained a loan of Rs.2,00,000/- from Vysya Bank Housing Finance Limited and also further loans from his friends and relatives and had invested a sum of more than Rs.5,00,000/- and had completed construction as per the approved plan issued by the municipality dated 30.07.1996. The suit is speculative. The defendant had acquired title by prescription and adverse possession and the rights, if any, of the plaintiff are extinguished by lapse of time. The suit claim is barred by law of

limitation. The suit is bad for non joinder of necessary and proper parties. The suit is liable to be dismissed.

5.3 Taking into consideration the above pleadings, the trial Court had framed the following issues for trial.

1 . Whether the plaintiff is entitled to declaration of the sale deed dated 31.05.1995 executed by B. Rami Reddy and three others is illegal, void and unenforceable?

2. Whether the plaintiff is entitled for recovery of possession of the schedule property?

3. Whether the plaintiff is entitled to mesne profits as prayed for?

4. To what relief?

5.4 At trial, the plaintiff and his supporting witness were examined as PWs1 and 2 and exhibits A1 to A12 were marked on the side of the plaintiff. On the side of the defendant, the defendant and his supporting witnesses were examined as DWs1 to 3 and exhibits B1 to B7 were exhibited.

5.5 On merits, the trial Court had decreed the suit of the plaintiff without costs and granted a decree declaring that the sale deed of the defendant dated 31.05.1995 is void and unenforceable in the eye of law and that the plaintiff is entitled to recover the possession of the plaintiff schedule property from the defendants. However, the trial Court's judgment is silent about the grant of profits. As already noted, the first appeal preferred by the unsuccessful defendant was also dismissed. Therefore, the defendant is before this court.

6. The learned senior counsel for the defendant had contended as follows: - 'Both the Courts below were in error in not appreciating the facts and the legal principles applicable to the facts of the case. The plaintiff had only brought a suit for cancellation of the sale deed in favour of the defendant. The plaintiff did not seek declaration of title even though he is not in possession of the property. The suit for mere declaration that the sale deed of the defendant is null and void and for recovery of possession without seeking the relief of declaration of plaintiff's title is not maintainable. The plaintiff must be non suited even if the title set up by the defendant is found against him.'

7. The learned counsel for the respondents/plaintiffs 2 to 4 had contended as

follows:

The Courts below have recorded a concurrent finding of fact that exhibit A5 sale deed, the copy of which is also marked as exhibit A1, which is dated 12.04.1983 executed by Ramachandra Reddy in favour of the sole plaintiff (since died) in respect of the plaint schedule property is true and genuine. Ram Reddy, who is the son of Ramachandra Reddy, and who was one of the vendors of the defendant under exhibit B1 is an attester of exhibit A5 original sale deed of the plaintiff. Though he was a material witness and the defendant claims that he had purchased exhibit B1 property from Ram Reddy and others, the said Ram Reddy was not examined. Though Ram Reddy and others are aware of the fact that Ramachandra Reddy had sold the property under exhibit A5 to the plaintiff they had falsely contended that Ramachandra Reddy is not the exclusive owner of the property and that the property is an ancestral joint family property and that in that property Ramachandra Reddy and his son and daughter are also entitled to a share. Though Ramachandra Reddy had already alienated the property under exhibit A5 in the year 1983 in favour of the plaintiff, the vendors of the defendant viz., Ram Reddy and others who had knowledge of the said document had again executed exhibit B1 sale deed for the self same property in favour of the defendant. Therefore, the Courts below, after considering the facts accurately and the evidence in the right perspective, have rightly held that exhibit B1 is a void document and that since Ramachandra Reddy had already conveyed the property to the plaintiff, his legal representatives have no right to execute exhibit B1 in favour of the defendant and that, therefore, exhibit B1 did not affect the interest in the property and hence, exhibit B1 sale deed dated 31.05.1995 is void. The trial Court had rightly granted a declaration as prayed for and directed the defendants to vacate and handover possession of the plaint schedule property to the plaintiff. The two questions raised before this Court are that the suit for recovery of possession without seeking the relief of declaration of title is not maintainable and that the judgments of the Courts below are vitiated for not considering the issue of the maintainability of the suit. Both the questions are not pure questions of law. When once the defendants are admitting that Ramachandra Reddy is the owner of the property; and, when once their document is found to be void as Ramachandra Reddy had already alienated the property under exhibit A5 to the plaintiff, they are bound to vacate and handover possession of the property to the plaintiff. No cloud is cast on the title as the plaintiff's vendor's title is admitted. Hence, there is no need to seek declaration of title and the suit is maintainable.

There is no substance in the substantial questions. The second appeal is devoid of merit and is liable to be dismissed.

8. Now the substantial questions are taken up.

9. Both the Courts below having considered the facts and the evidence had concurrently held that the sale deed of the defendant dated 31.05.1995 under exhibit B1 is void and unenforceable in the eye of law and the plaintiff is entitled to recover possession of the property from the defendant as the plaintiff's sale deed under exhibit A5 in respect of the plaint schedule property executed by Ramachandra Reddy during his life time is true and valid. The sale deed of the plaintiff under exhibit A5 is of the year 1983. Twelve years after the said sale deed, the defendant had purchased the very same property under exhibit B1 in the year 1995 from the legal representatives of the deceased Ramachandra Reddy though Ramachandra Reddy had already sold the property in the year 1983 to the plaintiff under exhibit A5. The fact that Ram Reddy had attested exhibit A5 sale deed executed by his father in favour of the plaintiff is not in dispute. This fact probablises the contention of the plaintiff that Ramachandra Reddy has every right to alienate the property and convey valid title to the plaintiff. The law is well settled that no one can convey a better title than what he has. Therefore, the legal representatives of Ramachandra Reddy i.e., the vendors of the defendant who had no right to alienate the very same property which was already alienated by Ramchandra Reddy to the plaintiff could not have executed a sale deed under exhibit B1 in favour of the defendant. Therefore, under exhibit B1 sale deed, the interest in the immovable property is not affected and no title passed to the defendant. Therefore, after declaring the sale deed of the defendant as void, the Courts below had directed the defendant to vacate and deliver vacant possession of the plaint schedule property to the plaintiffs. The Courts below had also taken note of the fact that the defendant while proceeding with the constructions during the pendency of the suit had filed a memo undertaking that in the event of his failure to succeed in the matter, he would demolish the constructions made in the suit schedule property without claiming any equities and that, therefore, the defendant had made constructions at his own peril. Therefore, the Courts below have directed the defendant, who had admittedly given an undertaking, to deliver the property as undertaken without claiming any equities.

Having examined the facts and the evidence analytically and keeping in view the narrow compass of the substantial questions of law, this Court finds that the concurrent findings of fact recorded by the Courts which are well supported by cogent and valid reasons do not call for any interference.

10. Now the only question is with regard to the maintainability of the suit without seeking the relief of declaration of title and non consideration of this aspect by the Courts below. In fact no such contention was raised before the Courts below and no issue was also framed by the trial Court on the maintainability of the suit or otherwise in the absence of the relief of declaration of title in the suit. A plain reading of the decision in **Anathula Sudhakar v. P. Buchi Reddy and other** shows that the Supreme Court had summarised the position in regard to suits for prohibitory injunction relating to immovable property as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar (supra)*]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

In the case on hand, having had knowledge of the sale deed of the plaintiff of the year 1983, the son of the vendor of the plaintiff and his other legal representatives

had executed another sale deed for the self same property in favour of the defendant in the year 1995. Therefore, the sale deed of the defendant did not affect the interest of the plaintiff in the property covered by his sale deed. By mere execution of a void document under which no title passed to the defendant, in the well considered view of this Court, no cloud is cast upon the plaintiff. Since the defendant is acting upon such void sale deed, the plaintiff sought for cancellation of the said sale deed and recovery of possession as the defendant had dispossessed the plaintiff. Having regard to the reasons, this Court finds that in the facts and circumstances of the case the plaintiff is not required to seek declaration of title as no cloud is cast on the title which the plaintiff had acquired by virtue of the registered sale deed of the year 1983. Therefore, there is no substance in the questions that the suit is not maintainable without seeking declaration of title and that the Courts below had committed error in not considering the aspect of the maintainability of the suit.

11. Viewed thus this Court finds that the second appeal is devoid of merit and is liable to be dismissed.

12. In the result, the Second Appeal is dismissed. There shall be no order as to costs. The defendant is granted two months time from the date of the receipt of a copy of this judgment to vacate and deliver the plaint schedule property to the plaintiffs. On the failure of the defendants to do so, the plaintiffs are at liberty to recover possession of the said property by following the procedure established by law.

Miscellaneous petitions, pending if any, in this second appeal shall stand closed.

M. SEETHARAMA MURTI, J

28th October, 2015

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