

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

SECOND APPEAL No.627 of 2015

JUDGMENT:

This Second Appeal is filed challenging the judgment and decree dt.01.06.2015 in AS.No.106 of 2012 of the I Additional District Judge, Warangal confirming the judgment and decree dt.05.11.2012 in O.S.No.1586 of 2003 of the Principal Junior Civil Judge, Warangal.

2. The appellants herein are defendants 2 to 4 in the suit. The 1st respondent filed the said suit against the appellants and father of the 2nd respondent for perpetual injunction restraining them from interfering with his alleged possession and enjoyment of the suit schedule property, which is said to be a house property bearing No.3-16-264 at Peddammagadda within the municipal corporation limits of Warangal.

3. The 1st respondent alleged that the suit schedule property was owned by his father by name Chityala Devadas; he died on 18.05.1995 and thereafter his mother by name Buchamma became its owner; that though he was staying at Manchiryal in view of his employment, he used to visit the suit schedule property; and that he had also put a lock to it and was paying property tax to Municipal Corporation, Warangal. He alleged that his mother-Buchamma gifted the suit schedule property to him under Ex.A1 dt.30.01.2003 and thus he became the absolute owner of the property. He contended that the father of the respondents by name Vandanam(D1) was resident of Lashkarsingaram of Hanamkonda; they were residing adjacent to the suit schedule property and have no concern with it; and that when he was repairing the suit schedule property, the defendants started to interfere with his peaceful enjoyment of the same.

4. Written statement was filed by the 1st appellant/2nd defendant contending that Buchamma is not the wife of Chityala Devadas and so she did not inherit the property of Devadas. He also denied that the 1st respondent/plaintiff is the natural son of Devadas and alleged that Devadas was a bachelor. He contended that the suit schedule property is owned and possessed by him(2nd defendant) from 1988 and the 1st respondent /plaintiff was not in possession thereof. He also denied that the 1st respondent had any title to the suit schedule property and claimed that an unregistered sale deed dt.08.06.1991(Ex.B16) was executed by the said Devadas in his favour conveying title of the suit schedule property to him. He contended that the 1st respondent never resided in the suit schedule property in any capacity. He claimed that the suit schedule property became dilapidated two years prior to the filing of the suit, so he put it under his lock and key. The other allegations made by the 1st respondent were also denied.

5. The trial Court framed the following issues:

- “i) Whether the plaintiff is in lawful possession of the suit schedule property?
- ii. Whether the plaintiff is entitled for relief of perpetual injunction as prayed for?
- iii. To what relief?”

6. Before the trial Court, the 1st respondent examined PWs.1 and 2 and marked Exs.A1 to A12. The appellants examined DWs.1 to 3 and marked Exs.B1 to B16.

7. By judgment and decree dt.05.11.2012, the trial Court decreed the suit. It held that Ex.A11 house hold supply card issued in 1977 showed that Buchamma is wife of Devadas and 1st

respondent/plaintiff is their son. It also referred to Ex.A12, copy of the complaint filed against the 1st respondent by the 1st defendant, wherein the 1st defendant had admitted the relationship between Devadas and Buchamma as husband and wife, and that the 1st respondent is their son. Having regard to the evidence of PWs.1 and 2, trial Court held that Ex.A1 Gift Settlement Deed was executed by Buchamma out of love and affection in favour of 1st respondent and that Exs.A3, A4 and A6 to A8 and A9 to A11 show the possession of Devadas over the suit schedule property along with the 1st respondent. It also held that Ex.B16 sale deed set up by 1st defendant is an unregistered document and therefore it is inadmissible in evidence and no reliance can be placed on the document by the 1st respondent in support of his plea that he had title to the property. The trial Court noted that in cross-examination, DW1 deposed that the 1st respondent/plaintiff was brought up by Devadas from his childhood including his education and that Devadas died in 1995 and concluded that this evidence indicates that 1st respondent was in possession of the suit schedule property during the life time of Devadas. It also referred to the evidence of DWs.2 and 3 and held that DW2 appears to be unaware of his father's signature on Ex.B5 and that DW3 had stated that he had no personal knowledge about the interse transaction between Devadas and the 1st defendant. Therefore, the Court below held that the evidence adduced by the appellants did not prove their possession over the suit schedule property.

8. Challenging the same, the appellants herein filed A.S.No.106 of 2012 before the I Additional District Judge, Warangal.

9. The lower appellate Court by judgment and decree dt.01.06.2015, dismissed the said appeal, confirming the findings of the trial Court. It referred to Ex.B16 sale deed set up by the appellants and pointed out

that the said document disclosed that house bearing No.3/1327 was said to have been sold under it to the 1st respondent, but the extent of the said house was not disclosed therein. It also referred to Ex.B5 dt.18.05.1987 and held that it disclosed the house bearing No.3-16-156 was mortgaged with Sk.Lal Ahmed and observed that if there was already a house bearing No.3-16-156 in 1987, it ought to have been mentioned in Ex.B16 executed in 1991 and the appellants did not explain this discrepancy. By referring to the evidence of DW3 who stated that he did not know whether the 1st defendant was in possession of the suit schedule property, it held that since the subject property was admittedly owned and possessed by Devadas and he died intestate leaving behind Buchamma and the 1st respondent, the property will devolve on them; and under Ex.A1 Gift Settlement Deed executed by Buchamma, 1st respondent became the owner of the suit schedule property. It relied on the house hold supply card/Ex.A11 and other documents filed by the 1st respondent and held that the findings of the trial Court regarding the possession of the 1st respondent was correct and did not warrant any interference in the said appeal.

10. Challenging the same, this Second Appeal is filed.

11. Sri M.Ravinder Babu, Counsel for the appellants contended that Buchamma is not the wife of Devadas and he was only a Bachelor when he died and so Ex.A1 document could not have been executed by Buchamma conveying any title to the 1st respondent. He also contended that once Ex.B16 sale deed was executed by Devadas in 1991, title passed on to the 1st defendant and therefore Buchamma was not competent to execute Ex.A1.

12. Ex.A11, Household Supply Card filed by the 1st respondent is of

the year 1985 and it shows that Buchamma is wife of Devadas and 1st respondent/plaintiff is their son. Ex.A12 copy of the complaint filed by the 1st defendant also indicates that he admitted the relationship between Devadas, Buchamma and the 1st respondent as parents and son. The 1st defendant as DW1 categorically deposed that the 1st respondent was brought up by Devadas from his childhood including his education and that Devadas died in 1995.

13. Since it is admitted by the 1st defendant that Devadas was the owner of the property and since the evidence indicates that Buchamma was his wife and 1st respondent was their son, it cannot be said that after the death of Devadas, Buchamma did not inherit the property and was not competent to transfer the same under Ex.A1 to the 1st respondent.

14. Admittedly, Ex.B16-Sale Deed set by the 1st defendant is an unregistered transaction. Therefore, no title under the said document passes to the 1st defendant. That apart, even the said document mentions only house number 3/1237. But Ex.B5 which is the earlier document dt.18.05.1987 discloses that house bearing No.3-16-156 was mortgaged by Devadas to one Sk.Lal Ahmed. No explanation is furnished by the appellants why Ex.B16 did not disclose the house No.3-16-156 and why it mentioned old number only.

15. Counsel for the appellants contended that there was an admission by PW1 that the suit schedule property was assigned new municipal No.3-16-156 and that the old number was 3/1237 and that it was in dilapidated condition at the time of institution of the suit.

16. But the fact remains that the alleged possession of the appellants

was not supported by DW3 and the admission of DW1 in his evidence that Devadas brought up the 1st respondent and got him educated during his life time, indicates that the 1st defendant himself admitted the possession of the 1st respondent of the suit schedule property during the life time of Devadas till 1995.

17. Admittedly, the suit schedule property has collapsed and now remains only an open plot. In respect of vacant land, it is settled principle of law that possession follows title. Since admittedly title to the suit schedule property is held to be with the 1st respondent, he is deemed to be in possession thereof.

18. In this view of the matter, I am of the opinion that there is no question of law, much less any substantial question of law, arising for consideration in this Second Appeal and that both the Courts below have correctly appreciated the evidence on record and held in favour of the 1st respondent.

19. The Second Appeal is therefore without any merit and it is accordingly dismissed. There shall be no order as to costs.

20. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

18th September, 2015.

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