

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.149 of 2006

Date:09.02.2015

Between:

Akula Rajamalliah and another.

...Appellants.

AND

Smt. Kanaparathi Sharada and another.

...Respondents.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.149 of 2006

JUDGMENT:

This appeal is preferred against judgment dated 22-11-2005 in A.S.No.3/2004 on the file of III Additional District Judge, Karimnagar whereunder judgment dated 09-01-2004 in O.S.No.22/1999 on the file of Senior Civil Judge, Peddapalli was reversed.

2. Appellants herein are plaintiffs and respondents herein are defendants in the suit O.S.No.22/1999 and they are hereinafter referred to as plaintiffs and defendants as arrayed

in the suit for convenience and better understanding.

3. Plaintiffs filed suit for injunction in respect of suit land contending that they have purchased the same on 10-11-1997 from late Kanaparthi Gopal Rao for a consideration of Rs.80,000/- and since the date of purchase, they are in possession and enjoyment of the said land and their names were also shown in the Pahani Patrika for the year 1997-98. They further contended that, after death of their vendor Gopal Rao, the defendants, who are legal representatives of Gopal Rao, tried to interfere with plaintiffs' possession and on 14-10-1999, with the help of their henchman, tried to occupy the suit land by raising a hut and it was averted at the interference of the plaintiffs, therefore, the defendants have to be restrained by way of permanent injunction.

4. Defendants resisted the claim of plaintiffs on the ground that their father Gopal Rao never sold the suit land to plaintiffs and all the documents are forged and fabricated documents and that plaintiffs were never in possession of the suit land at any time and further contended that their father was a Teacher working in a primary school at Pashigaom Village in Dharmaram Mandal and he never signed in Telugu as appearing in the alleged unregistered sale deed. They contended that their father was always signing in English only and the suit land was in possession and enjoyment of their father till his death and after his death, the defendants are enjoying the same, without any interference and that the

plaintiffs have no right and the suit is liable to be dismissed. On these contentions, trial Court examined three witnesses and marked five documents on behalf of plaintiffs and examined three witnesses and marked five documents on behalf of defendants besides one Court Document i.e., Commissioner's Report and on a overall consideration of oral and documentary evidence, decreed the suit in favour of the plaintiffs. Aggrieved by the decree granted by the trial Court, defendants preferred appeal to the District Court and III Additional District Judge, Karimnagar, on a reappraisal of evidence, allowed the appeal and dismissed the suit. Aggrieved by which, present second appeal is preferred.

5. Heard arguments of both sides.

6. Now according to the appellants, the following are the substantial question of law to be decided in this second appeal:-

- “(i) Whether an unregistered sale deed inadmissible in law for the collateral purpose of proving possession and for defending such possession under Section 53-A of Transfer of Property Act as held by the First Appellate Court.*
- (ii) Whether the entries in the pahanies, copy of which is issued by the competent authority i.e., Mandal Revenue Officer are not preferable to the copy issued by the Village Administrative Officer, who is not competent to issue such copies, as held by the First Appellate Court.*
- (iii) Whether an unregistered sale deed cannot be looked into for proof of possession for want of such sale deed being unstamped as held by the*

First Appellate Court.”

7. Now the point that would arise for my consideration in this appeal is whether the above referred three grounds are tenable and can be considered as substantial question of law?

8. **Point:-**It is the contention of the appellants that plaintiffs have purchased suit property from late Gopal Rao under a unregistered sale deed and that document is marked as Ex.A1 by consent, therefore, the defendants cannot raise any objection, but the appellate Court discarded this document on the ground that it cannot be looked into for any purpose being an unregistered and unstamped sale deed. Appellants have raised two grounds in respect of this document under the caption substantial question of law and the first ground is that this document can be looked into for collateral purpose and secondly, that it cannot be discarded having admitted in the evidence. On a scrutiny of the entire evidence and material including the proceeding sheet of the trial Court, the lower appellate Court observed that there is no record to show that this document is marked by consent. It also observed that this sale deed, which is referred as Ex.A1 in the appendix of evidence of trial Court is an inadmissible document.

9. Advocate for appellants contended that once this document is admitted in evidence, the defendants are *estopped* from raising objection with regard to inadmissibility and to support his arguments, he placed reliance on a decision of Supreme Court in **Shyamal Kumar Roy v. Sushil Kumar**

Agarwal^[1] and decision of this Court in **Akkireddi Nagayamma and another v. Adhikari Appalanaidu and another**^[2].

10. In **Shyamal Kumar Roy's** case (Supra-1), Hon'ble Supreme Court observed as follows:-

"Section 36, however, provides for a 'stand alone' clause. It categorically prohibits a court of law from reopening a matter in regard to the sufficiency or otherwise of the stamp duty paid on an instrument in the event the same has been admitted in evidence. Only one exception has been made in this behalf, viz., the provisions contained in Section 61 providing for reference and revision. In a case where Section 33 of the Act, as amended by West Bengal Act would be applicable, the proviso appended to sub-section (5) carves out an exception that if no action would be taken after a period of four years from the date of execution of the instrument."

11. In **Akkireddi Nagayamma's** case (Supra-2) also the same principle is reiterated. According to above two decisions, once the document is admitted, the Court is estopped from reopening the matter on the ground of insufficiently stamped. Therefore, now it has to be seen whether this document is admitted in the evidence or not.

As already referred above, three witnesses are examined on behalf of plaintiffs. According to plaintiffs' Advocate, this document is marked by consent. I have verified the proceeding sheet of the trial Court so also all the material papers. Nowhere, it is mentioned in the entire proceeding sheet that this document is marked by consent. P.W.1 filed

his chief affidavit and in the chief affidavit, he requested the Court to mark Pahani Patrika issued by revenue authorities as Ex.A1 and the Commissioner report as Ex.C1. Except these two documents, there is no reference about this document in the entire chief affidavit of P.W.1, but surprisingly, the appendix of evidence of trial Court refers to the disputed unregistered sale deed as Ex.A1. On the document, the endorsement of the Presiding Officer, is that this document is marked as Ex.A1 through P.W.1. Even in the cross-examination, only Exs.B1 & B2 are alone marked.

As seen from the record, at the interlocutory stage, documents on plaintiff side were marked and those exhibits numbers were continued without specifically admitting those documents in evidence during examination of the witnesses. So as rightly pointed out by Advocate for defendants, this disputed unregistered sale deed cannot be treated as admitted during evidence and marked as exhibit.

The decisions relied on by plaintiffs would only operate when there is material to show that an unregistered document without sufficient stamp is once admitted in the evidence, the Court cannot reopen and insist for collection of stamp duty or consider the objection of inadmissibility. But here, the disputed document is not at all admitted in the evidence and the endorsement on the document is only an error apparent on the face of the record. By noticing this, the learned appellate Judge even directed the lower Court to call for the explanation of the concerned clerk for giving marking to the documents. It is apparent from the record that the documents

are giving marking, without putting them to the witnesses examined on behalf of the plaintiffs. Therefore, the appellate Court was right in holding that this disputed document cannot be looked into for any purpose and the objection of the plaintiffs in respect of that finding is not at all tenable.

12. The other contention of the appellants is that the appellate Court gave weight to the documents issued by the Village Administrative Officer than to the documents issued by the Mandal Revenue Officer. As seen from the evidence, plaintiffs relied on Pahani Patrikas for the year 1997-98 and 1998-99. Defendants also produced Pahani Patrikas for the same year, but the documents produced by the defendants are issued by the Village Administrative Officer, whereas the documents produced by plaintiffs are issued by M.R.O.

As per Rule 25 (4) of Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989, Village Administrative Officer is the competent authority to issue certified copies in respect of village records, but they are to be counter signed by M.R.O. As per the provisions of Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, the Village Administrative Officer is the person at ground level, who has to maintain the records and who is in knowledge of the affairs of the village. For accepting the documents produced on behalf the defendants, the learned appellate Judge has elaborately discussed each and every objection raised on behalf of the plaintiffs. The lower appellate Court accepted the documents of defendants, because they are supporting and corroborating

with the oral evidence and other circumstances projected during trial. In the pleadings, plaintiffs specifically pleaded that suit land is a vacant land and the defendants tried to erect a hut on 14-10-1999, but from the evidence, the same was found to be incorrect. During evidence, plaintiffs contended that they raised hut after filing of the suit, which aspect is not at all supported and corroborated with any other material. On the other hand, from the evidence of Sarpanch of the Village, who is examined as D.W.2, it is clear that he never issued any permission to the plaintiffs for raising any hut and that the document produced by plaintiffs is a incorrect document. Considering all these aspects, the appellate Court reversed the finding of the trial Court and I do not find any wrong appreciation of evidence or incorrect findings in the judgment of the appellate Court. From the evidence, it is clear that defendants are in possession of the plaint schedule property as on the date of the suit and the plaintiffs have no semblance of right in the plaint schedule property and the document relied on by plaintiffs is an inadmissible document, therefore, I am of the view that the contentions of the plaintiffs cannot be sustained.

13. For these reasons, it is held that the substantial question of law urged by the plaintiffs is not at all tenable and that there are no grounds to interfere with the findings of the appellate Court and the appeal is liable to be dismissed.

14. Accordingly, appeal is dismissed. No costs.

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

JUSTICE S. RAVI KUMAR

Date:09.02.2015

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[\[1\]](#) AIR 2007 SUPREME COURT 637

[\[2\]](#) 2011 (2) ALD 71