

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

S.A.No.306 of 2015

Date : 09-10-2015

Between :

Korlakunta Srinivasa Rao

.. Appellant

And

Vadlamudi Narayana @ Narayana Rao

and others

..

Respondents

Counsel for appellant : Mr. Venkateswara Rao Gudapati

Counsel for respondents : Mr. Venkateswarlu Nimmagadda

The Court made the following :

JUDGMENT:

This Second Appeal arises out of Judgment and decree dated 20-3-2015 in A.S.No.26 of 2013 on the file of Senior Civil Judge, Sattenapalli, whereby he has confirmed the Judgment and decree dated 31-12-2012 in O.S.No.166 of 2005 on the file of the learned Principal Junior Civil Judge, Sattenapalli.

The brief facts leading to the filing of the Second Appeal are that one Bodugu Rafel and Makkapati Ramakotaiah have jointly purchased an extent of Ac.0-27½ cents under registered sale deed dated 5-4-1966. Respondent No.1/plaintiff purchased Ac.0-10 cents from the said Rafel under registered sale deed dated 10-2-2013, marked as Ex.A-1. When the appellant sought to interfere with his possession of the property, respondent No.1 has filed the above mentioned suit for declaration of title and permanent injunction in respect of the land purchased by him under Ex.A-1. It is his pleaded case that one V. Seetharamaiah was the original owner of Ac.3-00 of land out of which he has sold away Ac.0-27½ cents to Ramakotaiah and Rafel jointly on 5-4-1966; that within two years thereafter oral partition was effected between Ramakotaiah and Rafel in which the northern portion of the

property fell to the share of Ramakotaiah and the southern portion fell to the share of Rafel and thereafter Rafel has executed Ex.A-1 sale deed in respect of the suit land in his favour.

The appellant/defendant No.1 filed a written statement wherein it was inter alia averred that after the joint purchase by Ramakotaiah and Rafel, the latter has sold away his share on 17-4-1970 in favour of Ramakotaiah who in turn executed registered sale deed (Ex.A-3) dated 8-6-1970 in favour of Pedda Mastan Reddy and that thereafter Pushpa Leela-defendant No.2, the daughter of Pedda Mastan Reddy, executed sale deed dated 19-4-2003 (Ex.A-4) conveying the suit land in favour of the appellant.

Defendant No.2 remained exparte. Defendant No.3 filed a written statement supporting the version of defendant No.1, which was adopted by defendant No.4. Defendant No.3 further pleaded that after the death of their father Ramakotaiah, himself and defendant No.4 partitioned the property left behind by their father and that he has executed sale deed dated 6-5-1998 in respect of Ac.0-03 $\frac{3}{4}$ cents in favour of a third party.

On behalf of the 1st respondent/plaintiff, PW-1 to PW-3 were examined and Exs.A-1 to A-8 were marked. On behalf of the appellant/1st defendant, DW-1 to DW-3 were examined and Exs.B-1 to B-3 were marked. On appreciation of the oral and documentary evidence, the trial Court decreed the suit and the

appellate Court confirmed the said decree and Judgment in the appeal filed by the appellant.

At the hearing, Mr. Gudapati Venkateswara Rao, the learned Counsel for the appellant, submitted that while his client is not seriously contesting the decree for declaration of title, he is questioning the decree for injunction on the ground that the 1st respondent/plaintiff, on whom the burden lies heavily to show that there was partition between Ramakotaiah and Rafel, failed to discharge the said burden. The learned Counsel further argued that unless partition between Ramakotaiah and Rafel is proved, the plaintiff was not entitled to any particular land out of the joint extent of Ac.0-27½ cents and that therefore, both the Courts below fell into a serious error in granting injunction.

The fact that the 1st respondent/plaintiff has purchased the suit schedule property from Rafel who admittedly had half of the extent of land out of Ac.0-27½ cents along with Ramakotaiah, is not in dispute. Ex.A-1 sale deed under which Rafel has sold his share of Ac.0-10 cents is also not disputed. If the appellant has purchased any part of property from out of Ramakotaiah's notional share, it would not have been possible for granting decree for injunction in favour of the 1st respondent/plaintiff. But, a perusal of Ex.A-3 sale deed dated 8-6-1970 executed by Ramakotaiah and his two minor sons in favour of Pedda Mastan Reddy, shows that they have sold the

share of Rafel to the said vendor. The recital in para-4 of the said document clearly reveals this fact. It is stated therein that one of the executants of the document i.e., Makkapati Ramakotaiah has purchased the schedule land along with Rafel jointly on 5-4-1966; that subsequently Ramakotaiah has purchased the property (Ac.0-10 cents) from Rafel on 17-4-1970; and that the said property, as shown in the suit schedule, is being sold to Pedda Mastan Reddy for a consideration of Rs.300/-. In my opinion, these recitals would clinchingly establish that what is sold by Ramakotaiah to Pedda Mastan Reddy from whom the appellant has purchased the suit land was the share of Rafel only. Admittedly, the purported sale deed dated 17-4-1970 allegedly executed by Rafel in favour of Ramakotaiah conveying his share of Ac.0-10 cents has not seen the light of the day. The fact that Rafel has sold his share to respondent No.1/plaintiff not being in dispute, he is entitled to enjoy the property purchased from Rafel. Unless the appellant has produced any evidence to show that his vendor i.e., Pedda Mastan Reddy has purchased the notional share of Ramakotaiah from out of the joint property, the necessity for the plaintiff to prove the prior partition between his vendor Rafel and Ramakotaiah would not arise. From the evidence on record and the recitals of Ex.A-3 document, it would clearly appear that there was an oral partition between Makkapati Ramakotaiah and Bodugu Rafel and that being conscious of the said fact, Ramakotaiah has referred to the purported sale deed dated 17-

4-1970 in Ex.A-3 sale deed as if Rafel has conveyed his share to him. Though no specific finding was rendered by the Courts below on the prior partition between Ramakotaiah and Rafel, even in the absence of such a finding, respondent No.1/plaintiff is entitled to injunction by virtue of Ex.A-1 sale deed executed by Rafel, who is the owner of Ac.0-10 cents of land while the appellant has purchased the share of Rafel as evident from Ex.A-3. Hence, both the Courts below have not committed any error in granting decree for injunction in favour of respondent No.1.

For the above mentioned reasons, I do not find any substantial question of law arising in the Second Appeal and accordingly the Second Appeal is dismissed.

As a sequel to the dismissal of the Second Appeal, SAMP No.821 of 2015 is dismissed as infructuous.

Justice C.V. Nagarjuna Reddy

Date : 09-10-2015

AM