

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY
C.M.S.A.NO.1 OF 2015

JUDGMENT:

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At the stage of admission I heard both Advocates Mr.S.R.Sanku and V.V.N.Narsimham, counsel for the petitioner and the respondents.

The present appeal is filed aggrieved by the judgment and decree in A.S.No.22 of 2012, dated 20-10-2014, on the file of Additional District Judge, Narsapur. Whereunder the order passed by the Senior Civil Judge, Narsapur in E.A.No.539 of 2008 in E.P.No.65 of 2008 in O.S.No.84 of 2005 was confirmed.

The appellant herein filed petition before Senior Civil Judge, Narsapur under Order XXI Rule-58 C.P.C. in E.A.No.539 of 2008 in E.P.No.65 of 2008 claiming that she is the owner of the property by virtue of Ex.A.1 dated 24-05-2004 and her mother was the owner of the property who purchased the same on 14-06-1993 from Katakamsetti Ramanjaneyulu and she was in possession till she executed gift settlement deed in favour of the petitioner. She herself constructed the house bearing d.No.1-149 before execution of gift deed. Therefore, she became absolute owner of the property. The 1st respondent filed above E.P.for recovery of amount due by 2nd respondent in O.S.No.84 of 2005 and got attached the property under Order XXXVIII Rule-5 C.P.C. before the original Court and later, he filed E.P. and proceeded to realize the amount by sale of the property. While the matter stood, the present appellant filed petition before the trial Court under Order XXI Rule-58 C.P.C. and after full pledged enquiry, the trial Court came to conclusion that E.P.schedule property and claim petition schedule property are distinct, basing on the admissions in the cross-examination of PW.1 concluded that the property brought to sale is totally different from the property which is being claimed by the claim petitioner and dismissed the petition.

Aggrieved by the order of the trial Court, the present appellant preferred the appeal before the Additional District Judge, Narsapur in A.S.No.22 of 2012 and the same was dismissed confirming the order passed by the trial Court. Thus, there is concurrent finding of fact by the trial Court and the appellate Court with regard to identity of the property.

Even after going through the record, the EP schedule property is as follows:

“ West Godavari District, Narsapur Mandal, Narsapur S.R.,Linganaboyinacherla Panchayath area, Linganaboyinacherla village, house bearing Door No.1-149, and assessment No.138 an extent of 250 sq.yards of site within the following boundaries:

East: Land of Tirumani Dhanalakshmi
South: Road
West: House of Koyyalagadda Swarajyam
North: Land of Koyyalagadda swarajyam”.

Whereas, the schedule of the property in the claim petition is as follows:

“ An extent of Ac.0-21 ½ cents in R.S.No.254/6 and a house therein bearing Door NO.1-49 of L.B.Charla village within the following boundaries:

East: Land of Katakamsetti Ramadasu Naidu and others
(wrong boundary mentioned in E.P.schedule is land of Tirumani Dhanalakshmi)

South: Puntha (Road)
West: Land of Koyyalagadda Swarajyam
North: Land of Jalli Venkateswara Rao
(wrong boundary mentioned in E.P. schedule is land of Koyyalagadda Swarajyam)

With all fixers, furniture, fruit bearing trees and easementary rights.”

Except the survey number and door number all other details are

not correlating with the schedule, boundaries are different, extent is different. Even otherwise in Ex.A.1 the mother of the appellant only gifted Ac.0-21 ½ cents of agricultural land under Ex.A.1. There is nothing on record to show that the appellant or her mother constructed the house. If really mother of the appellant constructed the house, that should have been mentioned in the schedule of Ex.A.1. Apart from that the counsel for the appellant drawn my attention to the observations of the trial Court and the appellate Court about the admissions of PW.1 regarding the identity of the property. There are clear admissions that she is not claiming right in the house property and she does not know about EP schedule property. As observed by the trial Court, the appellate Court in para No.13 of the judgment and para No.15 of the trial Court and there is any amount of discrepancy in the identity of the property. Even other wise, identity of the property is based on fact. At best, it is a substantial question of fact, not a substantial question of law. But the remedy of the petitioner is elsewhere.

During argument, Mr.S.R.Sanku clearly submitted that the petitioner is ready to deposit Rs.1.00 lakh but the same is opposed by the counsel for the respondent Sri V.V.N.Narasimham raising several contentions with regard to participation in the auction by the husband of the appellant but they are not relevant for consideration at this stage. On overall consideration of entire material on record, I find no substantial question of law in view of concurrent finding recorded by the trial Court based on identity of the property.

Therefore, it is left open to the petitioner to redress his claim in appropriate forum as permitted by law. The observations made in this appeal are limited for the purpose of deciding this appeal and they will have no bearing on the other matters if any filed.

Accordingly, the appeal is dismissed, as I find no substantial question of law, but without costs in the circumstances. Miscellaneous

petitions pending, if any, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

17-06-2015

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