

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

**Civil Miscellaneous Second Appeal No.42 of
2014**

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Dated 11.02.2015

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Between:

Boddeda Mahalakshmi @ Lakshmi

...Appellant

and

Surisetty Bhudevi and 5 others

...Respondents

**Counsel for the Appellants: Ms.N.Anula
for Mr.Mangena Sree
Rama Rao**

Counsel for the respondents: ---

The Court made the following:

Judgment:

This Civil Miscellaneous Second Appeal arises out of the judgment and decree, dated 10-10-2014, in AS.No.236 of 2010, on the file of the Court of the learned X Additional District and Sessions Judge, Visakhapatnam at Anakapalli, whereby he has confirmed Order, dated 15-09-

2010, in EA.29 of 2008 in EP.No.31 of 2007 in OS.No.68 of 1995, on the file of the Court of the learned Senior Civil Judge, Yellamanchili, Visakhapatnam.

I have heard the learned Counsel for the appellant and perused the record.

Respondent No.1 filed the above-mentioned suit for recovery of possession of the suit schedule property against respondent No.3. The suit was decreed and the same was confirmed in first appeal.

The learned Counsel for the appellant submitted that the Second Appeal preferred by respondent No.3 is pending before this Court and evidently, the decree of the trial Court was not stayed. Respondent No.1 has filed EP.No.31 of 2007 for execution of the decree passed in the suit. Pending the EP, the appellant has filed EA.No.29 of 2008 under Order XXI Rule 97 of the Code of Civil Procedure, 1908 (CPC), resisting the execution petition and setting up the claim of ownership in herself.

It was the pleaded case of the appellant that she is the absolute owner of the EA 'A' schedule

property; that the said property originally belonged to one Goteti Venkanna Pantulu, Son of Peda Subba Rao Pantulu of Visakhapatnam; that the said person agreed to sell the said property to her; and that in pursuance thereof, he has executed an agreement of sale in her favour, on 05.02.1979, after receiving the entire sale consideration of Rs.1,000/- and delivered physical possession of the said property to her. It was the further case of the appellant that the vendor has agreed to execute a registered sale deed as and when she desires; that since the physical possession was delivered to her within one year from the date of agreement of sale, she has constructed the EA 'A' schedule house; and that since then, she has been enjoying the same. She has further pleaded that she has let out the ground floor portion to P.W.4, who is running a motor work shop by paying monthly rents; that she has been paying the house taxes to the Panchayat; that she is recognized as the original owner of the said property; and that by virtue of possession and enjoyment of the EA 'A' schedule property, she is protected by Section 53-A of the Transfer of Property Act, 1882.

Respondent No.1 has filed a counter-affidavit denying the claim of the appellant that one Goteti Venkanna Pantulu has executed an agreement of sale in her favour. She has pleaded that the alleged agreement of sale set up by the appellant is a rank forgery; that the appellant was never in possession of the EA 'A' schedule property; and that with a view to deny respondent No.1 of the fruits of the decree passed in the suit, the appellant, who is no other than the daughter of the senior paternal aunt of respondent No.3, was set up by respondent No.3.

Having regard to the rival contentions of the parties, the executing court has framed the following point for consideration:

“Whether the claim petitioner can resist the delivery sought by R.1 in pursuance of decree in OS.68/2005.”

On behalf of the appellant, PWs.1 to 6 were examined and Exs.A.1 to A.8 were marked. On behalf of respondent No.1, she got examined herself as RW.1 and got marked Exs.B.1 to B.23.

On appreciation of both oral and documentary evidence, the executing Court has

dismissed the claim petition.

The executing Court has rendered a specific finding that the evidence on record would clinchingly establish that the appellant is not in possession of the EA 'A' schedule property. It has also discussed the competing claims regarding title between the appellant and respondent No.1 and held that while Ex.A.12 is an unregistered agreement of sale, Ex.B.19 is a registered sale deed, based on which the title of respondent No.1 was declared by the trial Court, which was confirmed by the appellate Court. The executing Court has also referred to Section 53-A of the Transfer of Property Act, 1882, and held that as the appellant failed to prove the execution of Ex.A.1, she is not entitled to be protected under the said statutory provision. The lower Appellate Court, on re-appreciation of the evidence on record, by a detailed judgment, confirmed the order of the executing Court.

I have carefully considered the submissions of the learned Counsel for the appellant and perused the record.

Though the appellant has let in the oral

evidence of herself and PWs.2 to 6, she could not bring out anything to substantiate her plea that Ex.A.1- registered agreement of sale was executed by Goteti Venkanna Pantulu. While both the Courts below, on appreciation of the evidence, held that the appellant failed to prove her possession over the EA 'A' schedule property, respondent No.1, on the contrary, has got his title to the said property declared by the trial Court and the said judgment was confirmed in appeal. Admittedly, the appellant is none other than the niece of respondent No.3, who is the judgment debtor.

In these facts and circumstances, the executing Court is justified in accepting the plea of respondent No.1 that the appellant is set up by respondent No.3. As the appellant failed to establish her title and possession over the EA 'A' schedule property, the Courts below have rightly rejected her claim. The case on hand being a Second Appeal, no question of law much less a substantial question of law has been pleaded by the appellant warranting interference of this Court with the concurrent findings of fact recorded by the

Courts below.

For the above-mentioned reasons, this Civil Miscellaneous Second Appeal is dismissed.

As a sequel to dismissal of the Civil Miscellaneous Second Appeal, CMSAMP.No.66 of 2014, filed by the appellant for interim relief, is dismissed as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 11th February, 2015
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