

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.313 of 1998

Date:09.04.2015

Between:

Miryala Vidyasagar and another.

... Appellants.

AND

E. Rukkamma (died)

Miryala Balappa and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.313 of 1998

JUDGMNET:

This appeal is preferred against judgment dated 31-07-1996 in A.S.No.15/1993 on the file of III Additional Chief Judge, City Civil Court, Secunderabad whereunder judgment dated 01-10-1991 in O.S.No.1281/1983 on the file of Additional Judge, City Civil Court, Hyderabad is confirmed.

2. Brief facts leading to this appeal are as follows:-

Appellants herein are unsuccessful plaintiffs and they filed the above suit for a declaration that sale deed dated 13-08-1970 (Ex.B4) executed by D2 in favour of D1 is nominal fictitious and null and void and for partition of the suit house into four equal shares and deliver two such shares to plaintiffs. Suit is filed against four defendants and D1 contested the suit, whereas other defendants supported the case of plaintiffs. Trial Court framed appropriate issues on the basis of pleadings of both parties and examined one witness on each side and marked four documents on plaintiffs' side and seven documents on defendants' side and on a over all consideration of oral and documentary evidence, dismissed the suit upholding the objections raised by the first defendant. Aggrieved by the dismissal of the suit, plaintiffs preferred appeal and

III Additional Chief Judge, City Civil Courts, Secunderabad, on a reappraisal of entire oral and documentary evidence and also by considering the submissions of both side Advocates, dismissed the appeal confirming the findings of the trial Court. Now aggrieved by the concurrent findings of trial Court and first appellate Court, present appeal is preferred and the following are the substantial questions of law that are raised in the grounds of appeal:-

“The Courts below have failed to give cognizance to Section 14 (2) of Hindu Succession Act and had wrongly proceeded that Section 14 (1) is applicable. The question to be decided by this Hon'ble

Court is that if the suit property i.e., house is an ancestral house, then, in such a situation, the question of absolute charge or authority over the suit scheduled property by the women does not arise and secondly, Section 14 (1) of Hindu Succession Act, 1956 is not applicable to the present case and hence, the judgment and decree of the Courts below are contrary to the provisions of law and application of Section 14 (1) is un- called for.

The Courts below have wrongly calculated 12 years period in the instant case. Admittedly, both the appellants were minor when the sale deed was executed, that was in the year 1970 and consequently, under Section 109 of the Indian Limitation Act, 1963, the 12 years period is to be calculated only from the year and date of majority attained by the appellants and in such a situation, the suit questioning the validity of the sale deed is well within the period of limitation and the interpretation of Section 109 of Indian Limitation Act was wrongly given by both the Courts below. Both the Courts had erroneously and concurrently held that the suit property was sold in favour of the defendant by way of registered sale deed and hence, it could not be gone into. Without tracing out the fact that when there is no right to sell, the property retained by an individual, it would not make any difference whether the document is registered or not. Both the Courts below have failed to trace out the title of the Vendor while coming to the conclusion that there was proper execution of the sale deed. Hence, on this count also the judgment and decree of both the Courts below is liable to be set at nought.

Both the Courts below ought to have appreciated the evidence on record that since there are several creditors who were claiming money from the father of the appellants and a sham sale deed was executed only to prevent the honour of the ancestors and there was absolutely no real transaction. Especially, in view of the admitted fact that in the year 1968, originally, a sale deed was executed by the father of the appellants in favour of his own daughter for Rs.10,000/- and consequently, after the said document being released in his favour, another sale deed was executed after two years in favour of his real sister for Rs.3,000/-. The fact that a sale deed was executed for a lesser amount and far below the market value of the property, clearly establishes, in view of the clinching evidence that the sale deed is a sham and benami document and not a real execution by invoking the law of contracts.”

3. This Court, while admitting the appeal, formulated the following as substantial question of law “*whether in view of demise of third*

defendant pending the suit, the appellants will be entitled to the suit schedule house or a share therein.”

4. Heard both sides.

5. Advocate for appellants submitted so far as facts are concerned, there is no dispute including relationship between the parties. He submitted that the suit property was given to Shivamma with restricted right namely; to receive rents only and Shivamma died without executing any document, therefore, sons and daughters would succeed to her property. He submitted that during life time of Shivamma, she allowed daughter to stay in the house, which is only permissive in nature, but the daughter taking advantage of it, claimed absolute rights in the property and the sale deed executed by brother in favour of sister is only nominal one. He submitted for that reason, while seeking cancellation of that document, plaintiffs claimed partition, but the appellate Court even without going into pleadings and evidence, decided many factors, therefore, the matter has to be remanded back to the appellate Court to decide the appeal only with reference to the material on record. On the other hand, Advocate for respondents contented that appellate Court has not committed any error and it only decided a legal point touching limitation aspect, which was also raised before the trial Court. He further submitted that D3, who is father of plaintiffs, executed a sale deed in favour of D2 which is marked as Ex.B3 and in pursuance of that document, D2 executed sale deed, dated 13-08-1970, in favour of D1, which is now challenged in the suit and the plaintiffs cannot challenge this Ex.B4, without questioning validity of Ex.B3. He further submitted that the plaintiffs have not let in any evidence to support the allegation of sham and nominal pleading and except the self-serving testimony of P.W.1, no other material is there and considering the same, both trial Court and appellate Court disbelieved the claim of plaintiffs and that

there are no grounds to interfere with the concurrent findings. He further submitted that there is no substantial question of law involved in this appeal and the question of law formulated by this Court is already answered by the appellate Court, which is in accordance with law and that there are no grounds to interfere with the same.

6. Now the point that would arise for my consideration in this second appeal is whether the contention of appellants is sustainable with reference to the point formulated by this Court at the time of admission?

7. **Point:-** As already referred above, there is no dispute with regard to the factual aspects so also relationship between the parties. According to plaintiffs, plaintiffs & D4 are sons, D2 is daughter of D3 and D1 is sister of D3. Plaintiffs contended that they along with D3 & D4 constituted a Hindu Joint Family and the Family Properties are partitioned through registered partition dated 10-02-1960 (Ex.B1) and the suit house was allotted to Shivamma to be enjoyed by her during life time without right of alienation and after her death, the same was devolved on D3 and Mallaiah in equal shares. According to plaintiffs, during life time of Shivamma, D1 who lost her husband, came back and started living with Shivamma in the suit house and she is only a licensee and has no absolute rights. According to plaintiffs, D3 got executed a sale deed by D2 in favour of D1 on 13-08-1970 apprehending danger from the husband of second defendant and that it is a nominal document. So the plaintiffs are questioning the sale deed dated 13-08-1970 (Ex.B4) and sought for declaration and cancellation of it. Admittedly, D3 executed a sale deed dated 14-04-1969 in favour of D2, which is marked as Ex.B3 and in pursuance of that document only, second defendant executed this Ex.B4 document. Plaintiffs have not prayed for cancellation of Ex.B3-sale deed though they have pleaded, that the said document is also a nominal document, which is executed to save the family from

creditors. One of the objections of the respondents is that without questioning Ex.B3, relief claimed in respect of Ex.B4 is not at all maintainable. As rightly pointed out by Advocate for respondents when D2 got rights under Ex.B3, she has got every right to enjoy the property or alienate the property in the manner she likes, unless Ex.B3 is cancelled or set aside by competent Court.

8. One of the contentions of the first defendant is that Shivamma has become absolute owner and she is not a limited owner by virtue of Section 14 (1) of Hindu Succession Act. In fact, second plaintiff herein and his mother filed O.S.No.3587/1978 on behalf of D4 herein for partition and separate possession of the very same suit property and that suit was dismissed, after full pledged trial on 30-12-1983 and the appeal preferred was also dismissed by the appellate Court and the Second Appeal against that is also dismissed and it became final. In that suit, the contention that the suit property is a joint family property was not accepted and the findings given in that suit with regard to partition of the self same property would definitely operate as resjudicata and the learned appellate Judge considered this aspect and gave a finding that it operates as resjudicata. As seen from the record, there is a specific issue framed by the trial Court as to the principle of resjudicata and the same is held against the plaintiffs both by trial Court and appellate Court. In that context, the appellate Court referred to limitation aspect also and in the other angle, it observed that even under the provisions of the Limitation Act, the relief of plaintiffs is barred, therefore, the contention of the appellants that the appellate Judge decided limitation aspect without any issue and pleading cannot be sustained, because it is only an observation made by the appellate Court, while confirming the principle of resjudicata.

9. As seen from the material, D1 filed Rent Control Case against his

father and that case went up to Supreme Court and after finalisation of the proceedings in the Supreme Court, D1 got possession of the suit house through Court, in the Rent Control proceedings. As seen from the record, both trial Court and appellate Court have elaborately considered each and every aspect raised on behalf of both parties and answered them with cogent and convincing reasons with reference to material on record and there are absolutely no incorrect findings both on factual aspects and on legal aspects with regard to claim of plaintiffs. When the finding in the earlier suit and also in this suit that the suit property is not the joint family property, the claim of plaintiffs is not tenable. Plaintiffs contended that because of death of third defendant, they have a right in the suit schedule property and entitled for a share and this aspect was also considered by the trial Court and appellate Court because, D3 died during pendency of the suit and both Courts, on appreciation of entire material, held that plaintiffs are not entitled. I do not find any wrong application of law either by the trial Court or by the appellate Court and that there is no substantial question of law involved in this appeal and that the appeal is devoid of merits.

10. For these reasons, Second Appeal is dismissed with costs and as a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

No costs.

JUSTICE S. RAVI KUMAR

Date:09.04.2015

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