

HON'BLE SRI JUSTICE R. KANTHA RAO

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A.S. No.205 of 2014

JUDGMENT:

Heard Sri S.Sridhar, learned counsel appearing for the appellant and Sri Ch.Dhanamjaya, learned counsel appearing for the 2nd respondent.

2. Brief facts of the case are that the 2nd respondent obtained a mortgage decree against the 3rd respondent for recovery of certain amount, filed EP No.86 of 2010 and brought the petition schedule property for sale to realise the decretal amount. He claims that, in the court auction, he purchased the petition schedule property and possession of the property was also delivered in his favour on 23.08.2011 and since then he is in possession and enjoyment of the said property. In the execution petition i.e., EP No.86 of 2010, the appellant herein filed a claim petition under Order XXI Rule 97 CPC to declare him as the owner of the schedule property and that the auction purchaser/R.2 is not entitled to dispossess him from the petition schedule property. The said claim petition was dismissed by the execution court. Feeling aggrieved, he filed the present appeal.

3. There are some admitted facts in the present case. Originally, the petition schedule property belongs to one Sk. Amjabibi, who purchased the same through the registered sale deed dated 23.06.1958. After her death, Sk. Ammajibibi, her daughter, became the absolute owner of the property. The appellant herein claims to be the tenant under Sk.Amjabibi as well as under Sk. Ammajibibi. He also claims that Sk. Ammajibi offered to sell the schedule property to him for consideration of Rs.3,000/- and executed an agreement of sale deed dated 28.01.1968 and in pursuance thereof, he paid the entire sale

consideration to Ammajibibi. The agreement is possessory agreement of sale, wherein Ammajibibi agreed to execute regular sale deed in favour of the appellant as and when he demanded. Therefore, according to the appellant, he was earlier a tenant and subsequently became the owner of the schedule property by virtue of the agreement of sale dated 28.01.1968. He started aqua culture in the schedule property by converting the land into fish tanks. While so, on 24.07.2012 the Court Bailiff came to the schedule property and informed the appellant that the 2nd respondent purchased the schedule property in court auction in EP No.86 of 2010 in OS No.594 of 2007 on the file of the court of the I Additional Senior Civil Judge, Kakinada and he has to deliver possession of the property to the 2nd respondent. The appellant resisted the attempts of the Court Bailiff and later on filed a claim petition before the execution court. The 2nd respondent refuted the claim made by the appellant that he purchased the property under an agreement of sale dated 28.01.1968 from Ammajibibi. According to the 2nd respondent, the said agreement of sale is a fabricated and concocted document. The tenancy pleaded by the appellant was also denied by the 2nd respondent. His version is that the 3rd respondent/JDr purchased the petition schedule property from Sk.Ammajibibi on 31.01.1995 under a registered sale deed and since then he has been in possession and enjoyment of the said property. In this context, he submitted that previously Sk.Ammajibibi filed a tenancy petition in ATC 63 of 1984 against one Voleti Venkanna and Gurralla Saheb, for eviction and the said petition was allowed on 27.11.1992 directing the respondents therein not to interfere with her possession and also to vacate the schedule land. As the respondents therein failed to vacate the schedule land within the time granted by the Special Officer, Ammajibibi filed execution petition and obtained delivery of property on 27.09.1993. Subsequently, the 3rd respondent purchased the schedule property from Ammajibibi under a registered

sale deed dated 31.01.1995.

4. In the course of enquiry before the execution court, PWs.1 to 3 were examined and Ex.A.1 was marked on behalf of the appellant/petitioner. The 2nd respondent was examined as RW.1 and marked Exs.B.1 to B.5.

5. The learned court below having gone through the evidence on record, took note of the fact that the petitioner did not adduce any documentary evidence in support of his contention that he has been paying land revenue for the petition schedule land and pattadar pass book was issued in his favour. Whereas RW.1, filed certified copy of ATC register in respect of ATC 63 of 1984 to show the result of ATC and the same was marked as Ex.B.2. The contents of Ex.B.2 register further shows that EP No.10 of 1993 was filed by the Ammajibibi & others against Voleti Venkanna & others seeking delivery of possession and the court ordered delivery of the property by 30.08.1993. The Register further indicates that the property was delivered to the landlords on 30.08.1993 and the said delivery was recorded by the Court on 27.09.1993. As regards the identity of the property, the learned court below took the view that even though the survey number is not mentioned in the order passed in ATC No.63 of 1984, boundaries were tallied and therefore, there is no dispute as to the identity of the property. The learned court below further noticed that PW.1 admitted that he was a party in ATC 63 of 1984 and he is bound by the decree passed in ATC 63 of 1984. It is further observed by the learned court below that if really the petitioner (appellant herein) obtained an agreement of sale from Ammajibibi, he should have raised the same contention in the execution proceedings filed by Ammajibibi. The learned court below also took into consideration the fact of non-filing of any suit for specific performance against Ammajibibi in terms of Ex.A.1 agreement of sale. The learned court below further observed that the evidence of PW.3, who is the son of one of the attestors of

Ex.A.1, does not show that he had any acquaintance with the signature of his father. The important factor, which the court below took into consideration, is that even though PWs.2 and 3 have stated that the petition schedule property has been in possession of the petitioner (appellant) since 1968, no documentary evidence was adduced by the petitioner to substantiate the same. The learned court below further observed that mere payment of land revenue by the petitioner does not itself indicate that the petitioner is the owner of the property. According to the execution court, the fact that the petitioner did not file Ex.A.1 in any previous proceedings also creates any amount of doubt with regard to the genuineness of the said document. Having gone through the documents filed by the 2nd respondent, the trial court held that the 2nd respondent has proved his contention by cogent oral and documentary evidence that the petition schedule property is the subject matter of ATC 63 of 1984 and the said property was purchased by the 3rd respondent under Ex.B.4.

6. In the vacate stay petition, the 2nd respondent filed documents, namely, sale certificate, statement of encumbrance on property and the letter addressed by the learned I Additional Senior Civil Judge, Kakinada, while sending the sale certificate in EP No.86 of 2010 in OS No.594 of 2007 to the Sub-Registrar, Thallervu stating that the sale certificate is issued in favour of the 2nd respondent and directing the Sub-Registrar to make necessary entries in the relevant registers. The additional evidence petition is allowed. Thus, the 2nd respondent placed convincing documentary evidence in support of his contention. In the claim petition filed by the appellant, he stated that he is the owner of the schedule property and he is in possession of the same, but he did not discharge the burden by adducing any cogent evidence. The learned court below therefore, rightly believed the version of the 2nd respondent and disbelieved the version of the

appellant herein. Thus, in view of the fact that the appellant herein failed to discharge his burden and in view of the evidence let in by the 2nd respondent showing his title relating to the subject property, the execution court rightly dismissed the claim petition.

7. In the circumstances, I do not find any ground to interfere with the findings recorded by the execution court and the appeal is accordingly dismissed, but in the circumstances, no order as to costs. Miscellaneous petitions, pending if any in this appeal, shall stand closed.

R. KANTHA RAO, J

Date: 28.12.2015
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