

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal No.22 of 2015

JUDGMENT:

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The unsuccessful 3rd defendant had preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for brevity) assailing the decree and judgment dated 11.12.2014 of the learned Special Sessions Judge-cum-X Additional District Judge, Krishna at Machilipatnam passed in A.S.No.174 of 2008, whereby, the learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 25.08.2008 of the learned I Additional Junior Civil Judge, Machilipatnam passed in O.S.No.240 of 2002 filed for (a) declaration that the registered sale deed in favour of plaintiff dated 14.02.2002 is valid and binding; (b) declaration that the registered sale deed dated 28.02.2002 executed by the 2nd defendant in favour of the 3rd defendant in respect of item no.(1) of the schedule property is null and void; (c) for recovery of possession of the item no.1 of the plaint schedule property; and (d) for costs.

2. I have heard the submissions of the learned counsel for the appellant/3rd defendant ('the 3rd defendant', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. At the outset, it is necessary to mention that the learned counsel for the 3rd defendant would contend that the following substantial questions of law are involved and that therefore, the second appeal deserves admission and disposal on merits.

(1) Whether the learned Appellate Court is justified in disposing of the appeal without formulating proper points as contemplated under Order 41 Rule 19 CPC.

(2) Whether the learned Appellate court is justified in confirming the judgment passed by the learned trial court without recording independent reasons and findings.

(3) Whether suit is maintainable without reference to the alleged gift deed dt.31-12-2001 in the relief portion of the plaint.

(4) Whether both the courts justified in declaring the sale deed of the appellant dt.28-2-2002 duly executed by the defendant no.2 on the basis of alleged gift dt.31-12-2001 executed by defendant no.2 in favour of Defendant No.1 from whom the respondent no.1/plaintiff is claiming title even though said transaction is not binding on the appellant since he is the *bona fide* purchaser.

(5) Whether both the courts erred in declaring the Ex.B1 regular sale deed dt.28-2-2002 as null and void having admitted that the appellant is in possession of the suit property in pursuance of the said sale transaction.

(6) Whether sale deed dt.14-2-2002 as claimed by the respondent no.1/plaintiff is valid since possession was not delivered to him by virtue of alleged sale deed.

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4. On the other hand, the learned counsel for the plaintiff would contend that no such substantial questions or any other questions are involved and that therefore, the second appeal is liable to be dismissed at the admission stage.

5. Now, this court has to examine as to whether or not any substantial questions of law are involved in this second appeal and whether the appeal deserves admission for disposal on merits or is liable to be dismissed at the stage of the admission.

6. Before proceeding further in the matter, it is necessary to refer to the pleadings of the parties and the facts that lead to the filing of this second appeal.

6.1 The case of the plaintiff, in brief, is as follows:

The defendants 1 to 3 are close relatives. The 2nd defendant had gifted to the 1st defendant, the plaint schedule property in two items, viz., Ac.0.60 cents out of Ac.1.92 cents in R.S.No.326/6; Ac.0.30 cents in R.S.No.326/4 plus Ac.0.08 cents out of Ac.0.32 cents in R.S.No.326/10, under exhibit A1, the gift deed dated 31.12.2001, more fully described in the schedule annexed to the plaint. Later, the 1st defendant in order to discharge his debts had sold away the suit property covered by the gift deed to the plaintiff under exhibit A2, the registered sale deed dated 14.02.2002 and delivered the property to

the plaintiff. Since then, the plaintiff is in possession and enjoyment of the said property. While so, the defendants 2 and 3 had colluded together and had brought into existence a registered sale deed dated 28.02.2002 executed by the 2nd defendant in favour of the 3rd defendant. The 3rd defendant was never in possession of item no.1 of the schedule property except for three days prior to filing of the suit. The 3rd defendant had obtained the said sale deed and had filed a caveat petition in the Court of the learned Principal Junior Civil Judge, Machilipatnam against the plaintiff. The plaintiff is a *bona fide* purchaser for a valuable consideration under registered sale deed dated 14.02.2002 executed by the 1st defendant in favour of the plaintiff. The sale deed in favour of the 3rd defendant is one brought into existence by indulging in fraud and the 2nd defendant has no manner of right to sell item no.1 of the plaint schedule property having executed a registered gift deed dated 31.12.2001 in favour of the 1st defendant. The 3rd defendant having obtained a collusive sale deed dated 28.02.2002 had illegally occupied item no. (1) of the suit schedule property. Hence, the plaintiff is constrained to file the suit. No relief is claimed in the suit against the 2nd defendant.

6.2 On the death of the 2nd defendant during the pendency of the suit, the defendants 4 to 9 were impleaded, they being the legal representatives.

6.3 The case of the 3rd defendant is this:

The 2nd defendant owned and possessed Ac.0.60 cents in R.S.No.326/06 at Konikepudi village, Pedana Mandal having got the same in a partition that had taken place about 25 years back. The 2nd defendant is the absolute owner of the said property. About 13 years back, considering the poverty of the 3rd defendant and also affection towards the 3rd defendant, the 2nd defendant had orally gifted the said extent of Ac.0.60 cents to the 3rd defendant. Since then, the 3rd defendant is in peaceful possession and enjoyment of the said extent of property and was and is paying taxes in his name. The 3rd defendant had obtained a contract of sale for the above extent

from the 2nd defendant. Since the 3rd defendant wanted regularization of the said transaction in his favour in respect of the said Ac.0.60 cents, he had requested the 2nd defendant to execute regular registered sale deed. Accordingly, on 28.02.2002, the 3rd defendant had obtained registered sale deed from the 2nd defendant. When the plaintiff had proclaimed that he has got interest over the said land, the 3rd defendant had lodged a caveat petition on 06.03.2002. The plaintiff had filed the suit on 08.03.2002. After purchase of the land by the 3rd defendant from the 2nd defendant, the 3rd defendant had obtained pattadar passbook and title deed book in his name. The 3rd defendant is in possession and enjoyment of the property. The plaintiff did not raise any objection for the sale deed at any time. He did neither question the sale deed nor the issuance of the passbook and title deed book in favour of the 3rd defendant. There is no cause of action for the plaintiff. The 3rd defendant alone has got absolute right, title and possession over item no.1 of the plaint schedule property. The registered sale deed dated 14.02.2002 is invalid. It was brought into existence in order to dispossess the 3rd defendant from lawful possession. The suit is barred by limitation. The plaintiff might have colluded with the 2nd defendant.

6.4 The defence of the 2nd defendant and his legal heirs, in brief, is this:

On 09.10.2001, under a contract of sale, the item no.1 of the plaint schedule property was sold by the 2nd defendant to the 3rd defendant. Meanwhile, the 1st defendant who is the neighbour of the 2nd defendant came to the house of the 2nd defendant and requested him to transfer the item no.1 of the schedule property in his favour. The 2nd defendant had informed the 1st defendant that he had already entered into a contract for sale with the 3rd defendant. The 1st defendant having visited the house of the 2nd defendant a number of times had assured that he will take the responsibility in case anything happens and had persuaded the 2nd defendant in many ways. At last, the 2nd defendant had gifted the item no.1 of the schedule

property to the 1st defendant under registered gift deed dated 31.12.2001. When questioned, the 2nd defendant had informed the 3rd defendant that at the risk of the 1st defendant and as he was vexed with the begging attitude of the 1st defendant, he had executed the registered gift deed in favour of the 1st defendant in respect of item no.1 of the plaint schedule property. The sale deed executed by the 1st defendant in favour of the plaintiff is null and void and has no legal sanctity. Hence, the plaintiff did not get any title under the sale deed executed in his favour by the 1st defendant. Under an agreement dated 01.02.2002, the 2nd defendant had revoked the registered gift deed dated 31.12.2001 executed by him in favour of the 1st defendant. The 1st defendant had also given consent for revoking the said registered gift deed through the agreement dated 01.02.2002. Since the 1st defendant has no right, title and interest over item no.1 of the plaint schedule property, he cannot convey a better title to the plaintiff. When the 3rd defendant had raised hue and cry having come to know of the gift deed executed by the 2nd defendant in favour of the 1st defendant and had complained about the injustice caused to him, the matter was placed before the elders. As per the advice of the elders, on 01.02.2002, the revocation deed revoking the gift deed was executed and the said document was handed over to the 3rd defendant. On 28.02.2002, the 2nd defendant had thus sold an extent of Ac.0.60 cents out of item no.1 of schedule property in favour of the 3rd defendant by executing regular registered sale deed. The elders advised the 3rd defendant to get regular pattadar passbook and title deed book. Since the plaintiff is coming to the land in spite of a sale deed obtained by the 3rd defendant, the 3rd defendant had informed the same to the 2nd defendant and had later lodged a caveat in the Principal Junior Civil Court. Later, the 2nd defendant came to know that a suit has been filed by the plaintiff. Hence, the suit is liable to be dismissed.

6.5 Taking into consideration the above pleadings, the trial Court had

framed the following issues for trial:

1. Whether the plaintiff is entitled for decree of declaration for declaring registered sale deed dt.14.02.2002 executed by D2 in his favour to be valid and binding?
2. Whether the plaintiff is entitled to decree of declaration for declaring Registered Sale Deed dt.28.2.2002 executed by D-2 in favour of D-3 to be null and void in respect of item No.1 of the plaint schedule property?
3. Whether the plaintiff is entitled to decree for recovery of possession of item no.1 of the plaint schedule property?
4. Whether the plaintiff failed to adding any of the legal representatives of deceased D-2 Gudavalli Bhikshala Rao?
5. Whether the suit claim is barred by limitation?
6. Whether the plaintiff is entitled to decree as sought in the plaint?
7. To what relief?

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6.6 At trial, the plaintiff was examined as PW 1 and exhibits A1 and A2 were marked. And, the 3rd defendant and a supporting witness were examined as DWs 1 and 2 and exhibit B1 was marked. After full fledged trial, the trial court had decreed the suit of the plaintiff against the defendants. The Court of first appeal had dismissed the appeal confirming the judgment and decree of the trial court. Therefore, the aggrieved 3rd defendant is before this Court.

7. Before proceeding further, it is necessary to mention that at the time of hearing the learned counsel for the plaintiff had brought to the notice of this Court that the decree was already executed and the property was delivered to the plaintiff. He had also produced a copy of the delivery warrant and delivery proceedings in E.P.no.97 of 2014 in O.S.No.240 of 2002 on the file of the Principal Junior Civil Judge, Machilipatnam. The learned counsel for the 3rd defendant would submit that on the success of the 3rd defendant in this appeal he would be entitled to restitution and that, therefore, the 3rd defendant is entitled to prosecute the appeal notwithstanding the fact that the decree was executed.

8. I have given earnest consideration to the facts and I have carefully gone through the material record. I have noted the submissions.

9. There is no dispute that the subject property originally belonged to the 2nd defendant. He had admittedly executed exhibit A1-registered gift deed dated 31.12.2001 in favour of the 1st defendant. The 1st defendant had later executed exhibit A2-registered sale deed dated 14.02.2002 in favour of the plaintiff. Therefore, the plaintiff claims title, interest and possession over the plaint schedule property. So far as the 3rd defendant is concerned, he claims to have obtained a sale deed dated 28.02.2002 under exhibit B1 from the 2nd defendant, who is the original owner. However, this sale deed of the 3rd defendant executed by the 2nd defendant is subsequent to the gift deed under exhibit A1 dated 31.12.2001 where under the 2nd defendant had already gifted the subject property to the 1st defendant; further the 1st defendant, under exhibit A2 dated 14.02.2002, had sold the same property to the plaintiff. As the gift deed executed by the 2nd defendant in favour of the 1st defendant and the sale deed in turn executed by the 1st defendant in favour of the plaintiff both being registered documents and prior in point of time to the sale deed under exhibit B1 dated 28.02.2002 executed by the 2nd defendant in favour of the 3rd defendant, the plaintiff contends that plaintiff has got lawful right, title, interest in the property and that the 3rd defendant has no lawful title and interest in the property. If the registered documents under exhibits A1 and A2 on one hand and exhibit B1 on the other are examined in juxtaposition, it is obvious that 2nd defendant having earlier executed the exhibit A1 gift deed in favour of the 1st defendant had no right, title and interest to again convey the very same subject property to the 3rd defendant under exhibit B1, as the law is well settled that no one can convey a better title than what he has. Be that as it may.

10. Now, what requires consideration and examination for determining the

questions is the defence of the 3rd defendant and the defence of the 2nd defendant and his legal heirs, who are supporting the 3rd defendant. According to the defence, about 13 years prior to the filing of the defence before the trial court, the 2nd defendant considering the poverty of the 3rd defendant and out of affection towards him had orally gifted the extent of Ac.0.60 cents to the 3rd defendant and that in order to regularise the said transaction, the 3rd defendant had requested the 2nd defendant to execute a regular registered sale deed and that before obtaining a sale deed he had obtained a contract for sale on 09.10.2001 and that later, the 2nd defendant had executed exhibit B1, registered sale deed dated 28.02.2002 in favour of the 3rd defendant. The specific defence of the 2nd defendant is that he had executed the gift deed under exhibit A1 in favour of the 1st defendant having been vexed with his request and his begging attitude to gift the property to him though there is an agreement of sale in favour of the 3rd defendant even by the date of exhibit A1. It is also the defence that the gift deed executed by the 2nd defendant in favour of the 1st defendant was revoked at the intervention of the elders and the mediation that had taken place on 01.02.2002 and that at that time, an agreement revoking the said gift deed was executed. It is for the 3rd defendant to establish the above defence in order to successfully non-suit the plaintiff. However, neither the contract for sale dated 09.10.2001 said to have been executed by the 2nd defendant in favour of the 3rd defendant nor the agreement revoking the gift deed are produced and exhibited during the course of trial. When the execution of the gift deed is admitted, a mere revocation orally or by executing an unregistered agreement unilaterally revoking the gift are of no avail and do not alter the situation to the advantage of the 3rd defendant unless the gift deed under exhibit A1 in favour of the 1st defendant is cancelled by following the procedure established by law. Further, though it is urged that pattadar passbook and title deed book are obtained, the same are not filed and exhibited by the 3rd defendant. It is settled law that the agreement of sale

does not confer title and, therefore, the agreement holder, even assuming that the agreement is valid, does not acquire any title to the property. This view gets reinforced from the ratio in the decision in **Sunil Kumar Jain v. Kishan and others**^[1]. On a reading of Section 54 of the Transfer of Property Act it is manifest that a mere contract for sale of immovable property does not create any interest in the immovable property [see **Rambarn Prosad v. Ram Mohit Hazra and others**^[2]. The law is also well settled that entries in revenue records either pursuant to mutation or without mutation also do not confer title. The view of this Court finds support from a decision in **Suraj Bhan and others v. Financial Commissioner and others**^[3] wherein it was held as follows:

It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or *Jamabandi* have only 'fiscal purpose' i.e., payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent civil Court *vide Jattu Ram v. Hakam Singh and others [AIR 1994 SC 1653]*.

The Supreme Court in several judgements has held that the revenue records do not confer title. In **Corporation of the City of Bangalore v. M. Papaiah and another**^[4] the Supreme Court held that 'It is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law.' In **Guru Amarjit Singh v. Rattan Chand and others [(1993) 4 SCC 349]** the Supreme court has held that "that the entries in jamabandi are not proof of title". In **State of Himachal Pradesh v. Keshav Ram and Ors. [(1996) 11 SCC 257]** the Supreme Court held that "the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff. Therefore, any amount of assertion in defence, which is not established and which is not legally tenable is not sufficient to dislodge the case of the plaintiff who had purchased the subject property under a regular

registered sale deed under exhibit A2 from the 1st defendant, who, in turn, had got title, interest and possession by virtue of a registered gift deed under exhibit A1 executed by the 2nd defendant who is admittedly the original owner. Having regard to the reasons assigned, this Court is satisfied that the concurrent findings of fact recorded by the courts below on all the issues in favour of the plaintiff and against the defendants do not brook interference and that the courts below are justified in decreeing the suit of the plaintiff as prayed for. The findings of facts recorded by the courts below were based on proper appreciation of evidence and the material on record and there was neither illegality nor irregularity in those findings and therefore, the findings do not require to be upset. Further, the existence of a substantial question of law is a *sine qua non* for the exercise of jurisdiction by this court as per Section 100 of the Code. The questions raised strictly speaking are not even questions of law let alone substantial questions of law.

11. Viewed thus, this Court finds that none of the questions raised are substantial questions and that there is no substance in the questions raised and that therefore, the second appeal is devoid of merit and is liable for dismissal at the stage of admission. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. The view of this court is reinforced by the ratio in the decision in **Gurudev Kaur v. Kaki** (AIR 2006 SC 1975). In the case on hand, as this court finds, after careful examination of the pleadings, the evidence and the contentions, that no substantial question of law is involved, this second appeal is liable for dismissal at the stage of admission in view of the narrow compass of Section 100 of the Code of Civil Procedure.

12. In the result, the Second Appeal is dismissed at the stage of admission. The appellant/3rd defendant is granted three months time from the date of receipt of a copy of this judgment to vacate and handover possession of the plaint schedule property to the respondent/plaintiff. On the failure of the 3rd defendant to do so, the plaintiff shall be at liberty to obtain

possession of the said property by following the procedure established by law. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

14th August 2015
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[\[1\]](#) AIR 1995 SC 1891

[\[2\]](#) AIR 1967 SC 744

[\[3\]](#) (2007) 6 SCC 187

[\[4\]](#) (1989) 3 SCC 612