

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.1698 of 2011

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 ('CPC' for short) by the unsuccessful Plaintiff/appellant challenging the concurrent findings recorded by both the trial Court and Appellate Court regarding the genuineness of the Will dt. 09-01-1993.

2. For convenience of reference, the parties to the appeals are ranked as arrayed in O.S.No.74 of 1999 by Senior Civil Judge, Gudivada, through out the judgment.

3. The plaintiff filed the suit in O.S.No.61 of 2003 for declaration of title and recovery of possession claiming that she is the absolute owner of the property by virtue of a Will Dt. 09.01.1993 vide Ex.A.1, executed by Lakshmi Narasa Reddy, the maternal uncle of the plaintiff, in sound and disposing state of mind bequeathing the suit schedule property in her favour and later he died on 13.10.1993. While So, the defendants, without any manner of right, allegedly managed the revenue officials and got mutated their names in the revenue records in the place of Lakshmi Narasa Reddy and converted the land into brick klin. Therefore, on the basis of unregistered Will Dt. 9.01.1993 under Ex.A.1, she claims declaration of title to the schedule property and recovery of possession from the defendants as the defendants are admittedly in possession of the schedule property.

4. First defendant filed Written Statement, which was adopted by defendant Nos. 2 and 3 by filing a Memo, wherein they denied the alleged execution of the Will dt. 09.01.1993 in favour of plaintiff and *interalia* contending that Lakshmi Narasa Reddy never executed the

Will Dt. 09.1.1993 in sound and disposing state of mind bequeathing the schedule property in favour of plaintiff and they also denied the enjoyment of the plaintiff over the house belonging to late Lakshmi Narasimha Reddy during his life time. The defendants pleaded ignorance about the issuance of Legal Notice on 03.04.2003 and its refusal by them. The defendants specifically asserted that the Will dt. 9.1.1993 is a forged and fabricated document and basing on such Will, she is not entitled to claim any right in the schedule property.

5. It is specifically contended by the defendants that they are the absolute owners of the schedule property, as they are in possession and enjoyment of the same. On 10.05.1986 Lakshmi Narasa Reddy sold an extent of Ac.1.63 cents out of Ac.3.27 cents in S.No.1345 and another extent of Ac.1.07 cents in S.No.1284/1, totalling, Ac.2.70 cents bearing Patta No. 196 of Kota Bit-1 Village in favour of Mangapuram Nagendrakumar, S/o Gopalaiah, Chandragiri Muni Prakash Narayana Rao S/o Munikistaiah, first defendant and Addala Venkateswarlu, S/o Venkaiah for sale consideration of Rs.48,600/- and, after receipt of half of the sale consideration of Rs.24,300/-, Lakshmi Narasa Reddy executed an agreement of sale on two stamp papers worth Rs.5/- and another Rs.1/-, which was attested by Ramireddy Bujamma, who is the mother of Ramireddy Lakshminarasa Reddy, and D. Jayaramaiah, delivered vacant possession of the property to first defendant and others since they are the purchasers of the property. After purchase of the land under agreement of sale, first defendant and others converted the wet land into brick klin. Later, because of disputes in the business, the defendants have discontinued their business

6. As the defendant No.1 and others were always ready and willing to pay the sale consideration, they paid Rs.10,000/- on 01.10.1986 and obtained the receipt from Lakshmi Narasa Reddy and again, on 17.11.1986 an amount of Rs.4,000/- was paid and the same was

endorsed on the reverse of the agreement of sale and on 3.12.1986, the remaining sale consideration with interest was paid, which was endorsed on the reverse of the agreement of sale duly signed by Lakshmi Narasa Reddy while agreeing to execute a registered sale deed as and when demanded. Subsequently, on 5.6.1987, the defendant No.1 paid Rs.3,500/- on two occasions and Rs.1,265/- on another occasion to the said Narasa Reddy, which was endorsed on the reverse of the agreement. But, due to ill-health, defendant No.1 and other purchasers could not obtain the registered sale deed in their favour from the said Narasa Reddy. Thus, defendant No.1 and others are always ready and willing to perform their part of contract and to obtain registered sale deed.

7. Later, the purchasers have approached Mandal Revenue Officer, Kota, for mutation of their names in the revenue records and in turn the M.R.O recognized the agreement of sale executed by the said Narasa Reddy got registered under Section 5 (a) of A.P. Rights in Land and Pattadar Passbook Act, 1971 and collected the stamp duty and registration fee from the defendants, according to their share of property, and registered the agreement of sale after due enquiry and issued pattadar passbooks in favour of the defendants. In the partition, defendant No.1 was allotted Ac.0.85 cents in S.No.1345 and Ac.0.45 cents in S.No.1284/1. Defendant No.2 being the wife of Chandragiri Muni Prakash Narayana Rao, one of the purchasers, got Ac.0.78 cents in S.No.1345 and Ac.0.12 cents in S.No.1284/1 in partition and pattadar passbook and title deed were issued in her favour. Defendant No.3 was allotted Ac.0.50 cents in S.No.1284/1 which he purchased the same from another sharer i.e., Mangapuram Nagendra Kumar. Thus, the defendants are in exclusive possession and enjoyment of their respective shares by mutating their names in the pahanies and other revenue records as the owners of the property.

8. The plaintiff is in the habit of creating documents subject to her convenience and filing suits against different persons. Earlier, one Ramireddy Lalithamma, the sister of late R. Lakshmi Narasa Reddy, filed suit in O.S.No.06/1994 on the file of Junior Civil Judge, Kota, claiming her share in the family house and in the amount deposited in the post office by the said Narasa Reddy against the mother of the plaintiff by name Mudi Nandamma, Ramireddy Kotamma, the sister of the said Narasa Reddy, the plaintiff herein and two of her sisters by name A. Sulochanamma and M. Padmavathamma. In the said suit, the plaintiff filed Written Statement raising a specific contention that late Narasa Reddy executed his lost Will and Testament in sound and disposing state of mind on 5.5.1993 bequeathing all his properties in favour of Mudi Nandamma i.e., mother of the plaintiff herein and the cash deposited in the post office in favour of plaintiff herein and her two sisters. Though she set up a Will Dt. 5.5.1993 in the earlier suit, she introduced a different Will dt. 9.01.1993 in the present suit, to claim her right in the schedule property. The earlier suit was dismissed- in-part while disbelieving the Will dt. 5.5.1993. Therefore, the Will dt.9.01.1993, which is propounded by the plaintiff, is not genuine one and prayed for dismissal of the suit.

9. Based on the pleadings, the trial Court framed as many as six issues.

10. During trial, on behalf of plaintiff, PWs. 1 to 5 were examined and Exs. A.1 to A.6 were marked and on behalf of defendants, Dws. 1 to 5 were examined and Exs. B.1 to B.31 were marked.

11. Upon hearing the arguments of both counsel, the trial Court disbelieved the Will dt. 9.1.1993 marked as Ex.A.1 and held Issue No.1 against the plaintiff while dismissing the suit.

12. Aggrieved by the Decree and Judgment dt. 20.12.2007 in O.S.No.61 of 2003, the unsuccessful plaintiff preferred the appeal in

A.S.No.15 of 2009 before Senior Civil Judge, Gudur, which ended in dismissal by decree and judgment dt. 1.08.2011, confirming the findings recorded by the trial Court in relation to Ex.A.1 dt. 09.01.1993.

13. Aggrieved by the concurrent findings recorded by both trial Court and the appellant Court, the present appeal is preferred by the appellant/plaintiff on various grounds mainly contending that the findings of the Courts below on Ex.A.1—Will are not proved in accordance with law and the trial Court gave much weightage to Ex.B.9 and B.1, ignoring Ex.A.1--Will. But none of the questions raised in the grounds of appeal will not give rise to substantial questions of fact.

14. During the course of hearing, learned counsel for appellant contended that the evidence of PWs. 3 and 5 is sufficient to believe the execution of Ex.A.1 dt. 9.1.1993, but the Trial Court did not consider the evidence of PWs. 3 and 5 in proper perspective and committed an error and finally prayed to allow the appeal setting aside the decree and judgment of both trial Court and Appellate Court.

15. Whereas, Sri M.A. Chandramouli, learned counsel for respondents supported the concurrent findings recorded by both trial Court and the Appellate Court.

16. The basis for the claim of plaintiff is Will Dt. 09.01.1993, which is marked as Ex.A.1. The trial Court and the appellate Court, based on the discrepancies found in the evidence of witnesses, came to the conclusion that in earlier suit--O.S.No.6/1994 on the file of Junior Civil Judge, Kota, the plaintiff set up a different Will Dt. 5.5.1993 claiming her share in the deposit lying with the post office belonging to late Narasa Reddy, the alleged testator of the Will. However, she set up a different Will in the present suit to claim right over the property belonging to Late Lakshmi Narasa Reddy under testamentary dispossession, marked as Ex.A.1.

17. The findings recorded by both the Courts are purely based on appreciation of evidence of PWs. 1, 2, 3 and 5, and accordingly, the Courts below disbelieved the very execution of Ex.A.1. This Court in the second appeal cannot record any findings of fact since the jurisdiction of this Court under Section 100 of CPC is confined to substantial question of law. What is substantial question of law under Section 100 CPC depends upon the various circumstances and the Apex Court in ***Union of India and Ibrahim Uddin and Another***^[1], held in para Nos.47,48,50,54,55 and 56 as follows:

47. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a Second Appeal does not lie on question of facts or of law.

48. [In State Bank of India & Ors. v. S.N. Goyal](#), AIR 2008 SC 2594, this Court explained the terms “substantial question of law” and observed as under :

“The word ‘substantial’ prefixed to ‘question of law’ does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. ‘Substantial questions of law’ means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case.”

(Emphasis added)

Similarly, in *Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd.*, AIR 1962 SC 1314, this Court for the purpose of determining the issue held:-

“The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties.....” (Emphasis added)

50. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the provisions of Section 100 CPC. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

There may be a question, which may be a “question of fact”, “question of law”, “mixed question of fact and law” and “substantial question of law.” Question means anything inquired; an issue to be decided. The “question of fact” is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as under:-

“A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong.” (Vide: Salmond, on Jurisprudence, 12th Edn. page 69, cited in [Gadakh Yashwantrao Kankarrao v. E.V.](#) alias Balasaheb Vikhe Patil & ors., AIR 1994 SC 678).

54. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were

vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. (Vide: [Jagdish Singh v. Nathu Singh](#), AIR 1992 SC 1604; Smt. Prativa Devi (Smt.) v. T.V. Krishnan, (1996) 5 SCC 353; [Satya Gupta \(Smt.\) @ Madhu Gupta v. Brijesh Kumar](#), (1998) 6 SCC 423; [Ragavendra Kumar v. Firm Prem Machinery & Co.](#), AIR 2000 SC 534; Molar Mal (dead) through Lrs. v. M/s. Kay Iron Works Pvt. Ltd., AIR 2000 SC 1261; [Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.](#), AIR 2010 SC 2685; and [Dinesh Kumar v. Yusuf Ali](#), (2010) 12 SCC 740).

55. [In Jai Singh v. Shakuntala](#), AIR 2002 SC 1428, this Court held that it is permissible to interfere even on question of fact but it may be only in “very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible it is a rarity rather than a regularity and thus in fine it can thus be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection.”

Similar view has been taken in the case of [Kashmir Singh v. Harnam Singh & Anr.](#), AIR 2008 SC 1749.

56. Declaration of relief is always discretionary. If the discretion is not exercised by the lower court “in the spirit of the statute or fairly or honestly or according to the rules of reason and justice”, the order passed by the lower court can be reversed by the superior court. (See: [Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg & Anr.](#), AIR 1977 SC 747).

In view of the principles laid down in the above said judgment, the questions raised in the grounds of appeal are not the substantial questions of law.

18. It is the specific case of the plaintiff at the inception that the plaintiff became the absolute owner of the property based on Ex.A.1 dt. 9.1.1993. If really, this Will was executed by late Narasa Reddy during his life time, she would have pleaded the same in the earlier suit in O.S.No.06 of 1994 filed by Ramireddy Lalithamma, the sister of late R. Lakshmi Narasa Reddy. That itself is sufficient to conclude that the Will marked as Ex.A.1 was not in existence by the date of filing of the suit i.e., O.S.No.6/1994. The trial Court rightly disbelieved the Will and discredited the evidence of PWs. 3 and 5, one of the attestors, and having found many discrepancies in the evidence, attached no credence to their testimony. Even now, nothing is brought to the notice of this Court about the illegality, if any, committed by the trial Court either in oral evidence or in consideration of the documentary evidence.

19. As per Section 34 of Specific Relief Act, in a suit for declaration of title and recovery of possession, heavy burden lies upon plaintiff to

prove title. Consequential relief would depend upon establishment of title. Even where plaintiff establishes title, he can recover possession if only there does not exist any hurdle, such as plea of adverse possession by defendant. Therefore, in a suit for declaration, the burden is on the plaintiff under Section 34 of Specific Relief Act, to substantiate her contentions by adducing cogent and satisfactory evidence, since, the relief of Section 34 of Specific Relief Act is purely discretionary as it carves out an exception that the Court shall not make any such declaration where the plaintiff, being able to seek further relief. The basis for her claim is on Ex.A.1--Will Dt. 09.01.1993, which was disbelieved by the trial Court and the Appellate Court recording a concurrent finding that the Will is not genuine. Thus, the plaintiff has miserably failed to establish her right based on the Will marked as Ex.A.1 and both the Courts below rightly disbelieved the Will dt. 09.01.1993 and accordingly, recorded concurrent findings on the issue of execution of Ex.A.1--Will while dismissing the suit.

20. I find no grounds even after discerning of entire material on record to interfere with the findings of both the Courts below. Therefore, the findings of both Courts below does not suffer from any infirmity or perversity warranting interference of this Court. As there are no substantial questions of law in this appeal and accordingly, the Appeal is liable to dismissed.

21. In the result, this Second Appeal is dismissed at the stage of admission itself. No costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 19-07-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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^[1] 2012 8 SCC 148