

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

SECOND APPEAL No.57 of 2016

JUDGMENT:

This Second Appeal is filed by the appellant/3rd defendant questioning the judgment and decree dt.27-10-2015 of the

I Additional District Judge, Warangal reversing the judgment and decree dt.11-03-2013 of the II Additional Junior Civil Judge, Warangal in O.S.No.550 of 2010.

2. The 1st respondent/plaintiff filed a suit seeking declaration of title and perpetual injunction against the appellant and respondent Nos.2 to 5 in respect of an open place admeasuring 65 sq. yards at Kogilivai village. The 1st respondent claimed to have obtained a registered sale deed dt.23-02-2010 from its owner Chukka Uppalaiah, S/o.Pochaiah. The 1st respondent also contended that in fact he purchased the same on 20-06-2005 under an unregistered sale deed Ex.A-2 and took possession on 20-06-2005 itself and he subsequently obtained registered sale deed Ex.A-1 on 22-03-2010. He alleged that defendants obstructed him when he entered the suit schedule property.

3. The other defendants remained *exparte*, but the appellate/3rd defendant contested the proceedings.

4. The appellant denied the transactions between the appellant and her vendors. She contended that one Chukka Bachaiah had three sons by name Komuraiah, Poshaiiah and Veraiah; that Komuraiah died leaving behind his son also named Bachaiah; Poshaiiah died leaving behind him Uppalaiah and Keshaiiah; Veeraiah died leaving behind him Ellaiah, the appellant and another daughter by name Rajapochamma. She contended that the properties of Chukka Bachaiah, the ancestor were divided by his three sons and in the said partition, the suit schedule property fell to the share of Uppalaiah and Komuraiah, sons of late Poshaiiah; that they sold the property under an unregistered sale deed dt.03-07-2005 and delivered possession of the same to Veeraiah, father of 3rd defendant and on the death of Veeraiah, she got the property as his daughter.

5. Before the trial Court, the 1st respondent examined P.Ws.1 to 3 and marked Exs.A-1 to A-6. The appellant did not examine any witness nor marked any document. P.W.2 is Uppalaiah and P.W.3 is Keshaiiah.

6. By order dt.11-03-2013, the trial Court dismissed the

suit on the ground that there was some inconsistency between the oral evidence of P.W.1 and Exs.A-1 and A-2. It also observed that the 1st respondent did not explain why he took Ex.A-1 from P.W.2; and if the sale transaction of the property in his favour was concluded under Ex.A-2, there was no recital about Ex.A-2 in Ex.A-1 which is subsequent to Ex.A-2. It also held that non-mention of Ex.A-2 in Ex.A-1 creates a cloud about the genuineness of Ex.A-2 and that Ex.A-2 is probably doubtful since it was not even produced before the Revenue authorities.

7. Challenging the same, the 1st respondent filed A.S.No.102 of 2013 before the I Additional District Judge, Warangal.

8. The said appeal was allowed by the lower appellate Court holding that while the 1st respondent had a registered sale deed Ex.A-1 in his favour executed by P.Ws.2 and 3, P.Ws.2 and 3 categorically denied executing any sale deed in favour of Veeraiah. It also held that the appellant did not enter into witness box to prove her contention that the plaint schedule property was purchased by her farther Veeraiah from P.Ws.2 and 3. It held that once P.Ws.2 and 3 entered the witness box and

stated about the execution of sale deed by them in favour of 1st respondent and denied the execution of sale deed in favour of father of appellant, the plea of appellant cannot be accepted. It also observed that non-mention of Ex.A-2 simple sale deed in Ex.A-1 sale deed cannot come to the aid of the appellant and that since 1st respondent had obtained title on account of execution of sale deed by P.Ws.2 and 3, possession of property would be with 1st respondent since possession follows title.

9. Learned counsel for appellant relied upon an order dt.03-07-2014 in I.A.No.1623 of 2013 in O.S.No.1134 of 2013 and contended that the possession of property was held in that order to be with the appellant. This order has not been marked as evidence in A.S.No.102 of 2013. Therefore the appellant cannot derive any benefit from the said order.

10. I completely agree with the reasons assigned by the lower appellate Court for disagreeing with the judgment of the trial Court. The appellant was unable to prove that her father Veeraiah purchased the plaint schedule property from P.W.2 and P.W.3 while the plaintiff had a registered sale deed Ex.A-1 from them. So she had title and since

property is open land, the possession would follow title.

11. I therefore do not find any question of law much less substantial question of law for consideration in the Second Appeal and it is accordingly dismissed. No costs.

12. As a sequel, miscellaneous petitions pending if any, in this Second Appeal shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 12-02-2016

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