

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Appeal Suit No.2312 of 1996
and
Transfer Appeal Suit No.1489 of 2001

Between

Velagala Satyanarayana Reddy
and another

... Appellants/Defendants

and

Madapati Chittemma
and 2 others

... Respondents/Plaintiffs

DATE OF JUDGMENT PRONOUNCED: 05-02-2016

THE HON'BLE SRI JUSTICE R.KANTHA RAO

- | | | |
|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Appeal Suit No.2312 of 1996
and
Transfer Appeal Suit No.1489 of 2001

% 05-02-2016

Velagala Satyanarayana Reddy
and another

... Appellants/Defendants

Vs.

\$ Madapati Chittemma
and 2 others

... Respondents/Plaintiffs

! Counsel for the Appellants: Sri B.Vijaysen Reddy

Counsel for Respondents: Sri T.V.S. Prabhakar Rao

< Gist:

> Head Note:

? Cases referred:
Nil

HON'BLE SRI JUSTICE R.KANTHA RAO

Appeal Suit No.2312 of 1996

and

Transfer Appeal Suit No.1489 of 2001

Common Judgment:

The appellants in both the appeals are the

defendants in O.S.No.19 of 1985 and the plaintiffs in O.S.No.118 of 1991. They were unsuccessful before the trial Court in both the suits and accordingly filed these two appeals. As the plaintiff allegedly sold away the properties to the respondents 2 and 3, they were brought on record as party-respondents in A.S.No.2312 of 1996.

2. Since the contentions urged by both parties are one and the same in both the cases, the learned trial Court disposed of the suits by a common judgment. The appeals also, therefore, will be disposed of by the following common judgment as both the suits are between the same parties in respect of the very same subject matter and common questions of law and fact would arise for consideration.

3. For the sake of convenience in the common judgment, the parties will be referred to as the plaintiff and the defendants as they were originally arrayed in O.S.No.19 of 1985.

4. Madapati Chittemma, the plaintiff, is the sister of Velagala Venkata Reddy, who is no other than the father of the defendants. The plaintiff purchased the schedule land which is an extent of Ac.1-00 cts. out of Ac.4-16 cts. from the defendants and their father under a sale deed dated 25-6-1976. The plaintiff has been residing in Kavitam village, whereas the suit schedule property is situate in the village of the defendants. After purchase of

the property by the plaintiff, her brother Venkata Reddy assured her that he would look after the cultivation and give the produce to the plaintiff. Accordingly, he cultivated the suit land till his death on 24-4-1982 on behalf of the plaintiff and was paying her the net produce after deducting the expenses and land revenue. After his death, the defendants assumed possession of the property on behalf of the plaintiff and started cultivating the same. But they stopped paying the produce to the plaintiff. When the plaintiff demanded for delivery of the produce, the defendants made a proposal to the plaintiff to sell away the land to them at the prevailing market value. The plaintiff did not agree for the said proposal. On that, the relations between the parties became strained. The defendants did not pay the produce from 1982-83 to 1984-85 inspite of the repeated demands from the plaintiff. Moreover, they filed O.S.No.496 of 1984 on the file of the Court of District Munsif, Tanuku for a permanent injunction. On that, the plaintiff filed O.S.No.19 of 1985 for ejection of the defendants from the schedule property and to direct them to deliver the plaint schedule property and for profits with the aforementioned averments.

5. Whereas, the defendants filed O.S.No.118 of 1991 for a declaration that the plaint schedule land of an extent of Ac.1-90 cts. in R.S.No.266 of Aravalli village is their joint family property and for consequential injunction restraining the plaintiff from interfering with their

possession and enjoyment.

6. The version of the defendants is as follows:

During the lifetime of their father, they nominally executed a sale deed in respect of the suit land of an extent of Ac.1-00 cts. out of Ac.4-16 cts. under the threat of land acquisition and to claim more compensation in the event of the land being acquired by the Revenue authorities for providing house-sites to the landless poor persons. Their version is that the sale deed was sham and nominal, no profits were paid to the plaintiff at any point of time. The 1st wife of the

1st defendant is Jaya Lakshmi, who is no other than the daughter of the plaintiff. She died in the year 1977 leaving behind her the 1st defendant and a male child. After some time, the 1st defendant remarried and begot two sons through his 2nd wife. It is contended by the plaintiff in the above suit that the 1st defendant did not remarry till the end of 1981 though his 1st wife Jaya Lakshmi died in 1978. The plaintiff used to look after the son of Jaya Lakshmi. While so, by the end of cultivation year 1982-83, the brother of the defendant Venkata Reddy died.

7. It is under these circumstances and with the above contentions, both the parties filed the suits and they came to be disposed of on merits by the learned trial Court.

8. The learned trial Court decreed the suit filed by the plaintiff i.e. O.S.No.19 of 1985 and dismissed the suit filed by the defendants i.e. O.S.No.118 of 1991.

9. Before the trial Court, P.Ws.1 and 2 were examined on behalf of the plaintiff and Exs.A-1 to A-9 were marked and D.Ws.1 to 9 were examined on behalf of the defendants and Exs.B-1 to B-4 were marked. Exs.X-1, X-1(a), X-2 and X-3 were also marked.

10. The learned trial Court framed the following issues in O.S.No.19 of 1985:

- (1) Whether the sale deed dated 25-6-1976 is sham, nominal and without consideration ?
- (2) Whether the plaintiff is entitled to delivery of the suit property ?
- (3) Whether the plaintiff is entitled for decree of Rs.8,250/- ?
- (4) Whether the plaintiff is entitled to past profits ?
- (5) To what relief ?

11. In the other suit i.e. O.S.No.118 of 1991, the trial Court framed the following issues:

- (1) Whether the sale deed dated 25-6-1976 in favour of the defendant is a nominal document as contended by the plaintiff ?
- (2) Whether the plaintiffs are entitled to declaration and injunction as prayed for ?
- (3) To what relief ?

12. The trial Court answered all the issues in favour of the plaintiff and against the defendants, directed the plaintiff to work out profits by filing a separate application.

13. The trial Court recorded the findings viz., that the defendants failed to establish that the sale deed was

nominally executed in favour of the plaintiff under the threat of land acquisition proceedings and therefore, the sale deed is true and genuine. In consequence thereof, the trial Court decided both the suits against the defendants and in favour of the plaintiff.

14. I have heard Sri B.Vijaysen Reddy, learned counsel appearing for the appellants and Sri T.V.S. Prabhakar Rao, learned counsel appearing for the respondents.

15. The learned counsel appearing for the appellants contended that the trial Court overlooked the evidence adduced by the defendants relating to the land acquisition proceedings and the circumstances leading to the execution of Ex.B-1 sale deed and erroneously held that Ex.B-1 is true, genuine and supported by consideration. He would further contend that as on the date of execution of Ex.B-1 sale deed, vendor No.3 is a minor and the property was sold without the permission of the Court and therefore, the sale deed itself is void and as a consequence, the defendants are entitled for the relief of declaration and injunction as prayed for by them.

16. The following points would arise for consideration in these appeals:

(1) Whether there are any valid grounds to set aside the finding recorded by the trial Court that Ex.B-1 sale deed is true, valid and binding on the defendants ?

(2) Whether the sale under Ex.B-1 sale deed is void

for not obtaining permission from the Court as vendor No.3 was a minor on the date of execution of the sale deed ?

17. Point No.1:- There is no dispute about the execution of the sale deed by the defendants in favour of the plaintiff. Though the consideration was not passed in the presence of the registering authority, the recitals of the sale deed clearly indicate that by the date of execution of the registered sale deed, the plaintiff paid the consideration on different dates and the said fact has been admitted by the defendants before the registering authority.

18. As regards the land acquisition proceedings, the defendants filed certain documents to show that some persons belonging to weaker sections submitted applications to the Block Development Officer to allot the land of the defendants which includes the suit land for allotting the house-sites for the purpose of constructing houses. It is also borne out from the evidence that subsequently, the said applicants withdrew their applications. The applications submitted by the people of weaker sections also have not been duly proved in accordance with law before the trial Court and the learned trial Court doubted the authenticity of those applications and rightly refused to place any reliance on the said documents.

19. Admittedly, no land acquisition proceedings

were initiated by the Revenue authorities. The version that on submitting some applications by the people of weaker sections, the defendants apprehended that their land would be taken away by the Government itself is unbelievable. As rightly observed by the learned trial Court, the said contention was introduced by the defendants only for the purpose of the present cases.

The specific contention of the defendants is that they nominally executed the sale deed for more than the market value to the plaintiff in order to claim more compensation in the event of the suit land and the adjacent land are acquired for the purpose of providing house-sites to the weaker sections. In such an event, as rightly observed by the trial Court, the burden is on the defendants to establish that they sold the land at a higher price than the market value but they did not adduce any evidence in this regard. Therefore, the theory of the apprehension regarding land acquisition has rightly been disbelieved by the learned trial Court.

20. It is admitted by the defendants that subsequent to the execution of Ex.B-1 sale deed, there was partition among the defendants. If that is so, the suit schedule property must have been allotted to one of the sharers which would naturally be evidenced by the partition deed. But the defendants did not produce any partition deed to substantiate their version that the suit schedule property is

part of the joint family property and therefore, it was the subject matter of partition.

21. One of the contentions urged by the defendants is that subsequent to Ex.B-1 sale deed, the original sale deed was not delivered to the plaintiff and according to the defendants, this very fact obviates that the sale deed is nominal one. There is absolutely no force in the said contention. Merely because the defendants are in the possession of the original sale deed, it cannot be said in view of the close relationship between the parties that the fact by itself enables the Court to draw an inference that the sale deed is nominal.

22. The defendants also put-forth a contention that the plaintiff has no capacity to purchase the suit land as she incurred huge debts while performing the marriage of her daughters. It is not the case of the defendants that the plaintiff has no property at all. Whereas the plaintiff asserted that she sold away her lands for the purpose of repaying certain debts and to perform the marriage of her daughters, with the remaining amount she purchased the suit schedule property. In view of the explanation offered by the plaintiff, it cannot be said that the plaintiff has no financial capacity to purchase the suit land.

23. Much reliance has been placed on Ex.B-3 letter which was allegedly executed by the plaintiff stating about

the nominal nature of Ex.B-1. One of the witnesses D.W.2, who is related to the defendants as well as the plaintiff, spoke about the nominal nature of Ex.B-3 letter. Except D.W.2, the attestors and also the scribe expired. However, in this context, it requires to be noticed that Ex.B-1 sale deed was executed on 25-6-1976 and Ex.B-3 letter was executed on 15-12-1976 i.e. long after the execution of Ex.B-1. If really Ex.B-1 sale deed is a nominal one, the defendants ought to have obtained Ex.B-3 letter on the same day when Ex.B-1 sale deed was executed. However, the letter relates to relinquishment of the right of the plaintiff in the suit property which is an immoveable property. Any right in relation to immoveable property must be relinquished by executing a registered document. The learned trial Court, in fact, ought not to have admitted Ex.B-3 in evidence as it relates to a relinquishment of right in the immoveable property. In any event, the plaintiff denied to have executed the said document and the defendants failed to establish that the same was really executed by the plaintiff.

24. Another important factor is that D.W.1 stated in his deposition that they executed Ex.B-1 sale deed in favour of the plaintiff under the belief that the plaintiff would, in turn, execute a reconveyance deed in their favour. D.W.3 in the cross-examination stated that when his brother asked P.W.1 to execute a reconveyance deed, the plaintiff stopped visiting their house and during the

period of 6 years, she did not visit the house and she did not even attend her brother's funeral at Aravalli. He also deposed that the plaintiff did not come to Aravalli at all after Ex.B-3. When the defendants executed Ex.B-1 sale deed in favour of the plaintiff under the genuine belief that she would, in turn, execute a reconveyance deed and when she refused to execute a reconveyance deed in 1976 itself, the natural course of the conduct of the defendants would be to immediately take some legal action against the plaintiff by issuing a lawyer's notice and filing a suit against her. But they have not taken any such action till 1984. All these circumstances would create any doubt regarding the genuineness of Ex.B-3 letter. Moreover, as Ex.B-3 letter is with regard to relinquishment of immoveable property of Ac.1-00 cts. of land, the learned trial Court ought not to have admitted the said document in evidence and therefore, in the considered view of this Court, Ex.B-3 cannot be taken into consideration at all. The learned trial Court rightly examined all these aspects and repelled the contentions urged by the defendants and answered this point in favour of the plaintiff, which do not require any interference in the appeals.

25. Point No.2:- The contention urged on behalf of the defendants is that vendor No.3 was a minor on the date of execution of Ex.B-1 sale deed, as no permission

was obtained from the Court by the defendants to execute the sale deed on behalf of vendor No.3, the sale deed is void.

26. At the outset, it may be noticed that the said point is urged for the first time in the appeal. It is not part of the pleadings of the defendants before the trial Court. However, the property is not the exclusive property of vendor No.3 in the hands of the defendants, the property is the joint family property. Even if the minor has undivided interest in the joint family property as a co-parcener, the manager or kartha of the joint family property can alienate the joint family property so as to bind the interest of the minor co-parcener if the alienation is for legal necessity or for the benefit of the estate. In Ex.B-1 sale deed, it is clearly mentioned that the property was disposed of for family necessity. Further, the transaction under Ex.B-1 sale deed is not

ab initio void. It would be voidable if the minor challenges the alienation after attaining majority within the period of limitation. No such thing happened in the present case. The minor, on whose behalf the sale deed was executed, has not challenged Ex.B-1 sale deed.

The suit is not, in fact, filed by the minor co-parcener after attaining majority, to set aside the sale deed.

The defendants, who executed the sale deed, filed the present suit to declare that the suit property is their joint family property. Such a declaration, in the considered

view of this Court, cannot be granted to the defendants without there being a relief asked for setting aside the Ex.B-1 sale deed.

27. Having regard to the facts and circumstances stated hereinabove, the defendants are deemed to be in permissive possession of the schedule property as they continued in the possession of the property with the consent of the plaintiff and refused to vacate the land at a later point of time inspite of the demands made by the plaintiff to deliver possession to her, therefore, they are not entitled for any injunction against the plaintiff.

28. For the foregoing reasons, the learned trial Court on a proper appraisal of the evidence with reference to the facts and circumstances of the case, rightly answered the issues in favour of the plaintiff and against the defendants. The findings recorded by the trial Court do not call for any interference in the present appeals. The appeals, therefore, fail and are dismissed.

The miscellaneous petitions, if any, pending in these appeals shall stand closed. No costs.

R.KANTHA RAO, J.

05th February, 2016.

Ak

Note:-

L.R. Copy to be marked.

(B/o)

Ak

HON'BLE SRI JUSTICE R.KANTHA RAO

Appeal Suit No.2312 of 1996

snd

Transfer Appeal Suit No.1489 of 2001

(Common Judgment)

05th February, 2016.
(Ak)