

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

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MONDAY, THE EIGHTEENTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN

-
PRESENT

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THE HON'BLE SMT. JUSTICE ANIS

-
SECOND APPEAL No. 573 OF 2015

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Between :

G.Laxmanjee (died) and five others

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... APPELLANTS

A N D

G.Subhas and three others

...

RESPONDENTS

This Court made the following:

THE HON'BLE SMT. JUSTICE ANIS

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SECOND APPEAL No. 573 OF 2015

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JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is directed against the judgment and decree, dated 10.03.2014, passed in A.S.No.310 of 2009 on the file of the V Additional District Judge (Fast Track Court), Ranga Reddy District at L.B.Nagar, whereunder and whereby, the judgment and decree, dated 31.08.2009 passed in O.S.No.296 of 1997 on the file of the Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar, were confirmed.

2. The appellant No.1 (died) is the defendant No.1 (defendants 2 to 7 were added as per orders in I.A.No.2380 of 2006 dated 01.02.2007 during pendency of O.S.No.296 of 1997) and the respondent No.1 is the plaintiff before the trial Court. For better appreciation of facts, the parties are hereinafter will be referred to, as they are arrayed before the trial court.

3. The plaintiff filed the suit for specific performance of an agreement of sale dated 05.10.1995 in respect of the suit schedule property i.e. house bearing Old No.27-55 (New No.30-225) admeasuring 125 Sq. yards situated at Old Safilguda, Malkajgiri Municipality, Ranga Reddy District.

4. According to the plaintiff, the defendant No.1 is the absolute owner of the suit schedule property. The plaintiff and the defendant No.1 are close relatives. The defendant No.1 offered to sell the suit schedule property to the plaintiff consisting of one room with shed and a well having compound wall for a sale consideration of Rs.55,000/-.

The plaintiff agreed to purchase the same for the said total consideration. In pursuance of the same, the plaintiff and the defendant No.1 entered into an agreement of sale on 05.10.1995. The plaintiff paid the total sale consideration of Rs.55,000/- on the same day and the defendant No.1 executed the agreement of sale and also acknowledged the receipt of the total sale consideration and delivered the possession of the suit schedule property. After receiving the entire sale consideration and also delivery of possession, the defendant No.1 failed to execute the Sale deed in spite of the requests made by the plaintiff. Further, the defendant No.1 did not come forward to fulfil and perform his part of contract by executing the Sale deed. When the plaintiff approached him by expressing his readiness and willingness to fulfil or perform his part of contract, the defendant No.1 failed to execute the Sale deed in favour of the plaintiff. Hence, the plaintiff filed the present suit.

5. The defendant No.1 filed Written Statement and denied the agreement of sale, but specifically stated that he never executed the Sale deed in favour of the plaintiff and also denied about receipt of Rs.55,000/- on 05.10.1995. The defendant No.1 also stated that he gifted the suit schedule property on 23.03.1995 to his son by name Yadilal (defendant No.4) and delivered the possession, and therefore, he is not the owner as on the date of alleged agreement of sale, as such he cannot execute the Sale deed. Therefore, the question of his performance or non-performance of contract does not arise. He also specifically stated that the plaintiff obtained the signatures from him and other family members on the pretext that he got matters before the authorities in respect of his properties and by using the said papers, the present agreement of sale was created, and prayed the Court to dismiss the suit.

6. The defendant No.4 also filed the Written Statement, which was

adopted by the defendants 2, 3 and 5 to 7. All the other defendants also raised the same contentions and denied the agreement of sale in favour of the plaintiff.

7. Basing on the above pleadings, the following issues have been settled by the lower Court for trial:

1. Whether the plaintiff is entitled for specific performance of an agreement of sale dated 18.06.1995 in respect of suit land?
2. Whether the suit is barred by limitation?
3. To what relief?

The trial Court also framed the following additional issues:

1. Whether the deceased defendant executed a registered Gift deed dated 23.03.1995 in favour of 4th defendant and put in possession of the property to him?
2. Whether the deceased defendant was not in possession of the suit property on 05.10.1995?
3. To what relief?

8. To substantiate the case of the plaintiff, PWs 1 to 3 were examined and Exs.A.1 to A.22 were got marked. On behalf of the defendants, DWs 1 and 2 were examined and Ex.B.1 was got marked.

9. The trial Court, after considering the oral and documentary evidence, decreed the suit in favour of the plaintiff and held that the plaintiff is entitled for execution of the registered Sale deed in his favour.

10. Aggrieved by the judgment of the trial Court, the defendants preferred A.S.No.310 of 2009 on the file of the V Additional District Judge (Fast Track Court), Ranga Reddy District. The appellate Court, after considering the evidence at length, dismissed the appeal with a direction to the defendants to execute the registered Sale deed in

respect of the suit schedule property in favour of the plaintiff in terms of an agreement of sale dated 05.10.1995 within 60 days from the date of its judgment. It is further directed that in case the defendants did not come forward for the same, the lower Court shall execute the same as per law. Challenging the same, the present Second Appeal is preferred.

11. The learned counsel for the appellants raised the following substantial questions of law:

- a) Whether agreement of sale dated 05.10.1995 alleged to have executed by defendant No.1 is enforceable when by the date already the defendant No.1 has transferred the suit schedule property by way of registered Gift deed dated 23.03.1995 in favour of defendant No.4?
- b) Whether the agreement of sale dated 05.10.1995 is valid and binding on the appellants when the executant/defendant No.1 has no valid title as on the date?
- c) Whether in the absence of the pleading or relief to declare the Gift deed dated 23.03.1995 as sham and nominal, the Courts have power to declare the said gift deed is not valid?
- d) Whether both the Courts have justified in holding the agreement of sale is valid in the absence of expert opinion regarding the signatures on the agreement of sale?

12. Heard the arguments.

13. Now, the point that would arise for my consideration in this appeal is whether there is any substantial question of law involved in this appeal.

14. **POINT:**

A perusal of the record shows that admittedly the plaintiff and the

defendants are close relatives. The suit schedule property originally belonged to the defendant No.1 and the schedule property i.e. house bearing old No.27-55 (new No.30-225) is situated at Old Safilguda, Malkajgiri Municipality, Ranga Reddy District admeasuring 125 Sq. yards. A perusal of the evidence of PWs 1 to 3 shows that the defendant No.1 offered to sell the suit property and the plaintiff agreed to purchase the same and the same was happened on 05.10.1995. Both the plaintiff and the defendant No.1 entered into an agreement of sale for a total consideration of Rs.55,000/-. The plaintiff paid the entire sale consideration on the same day, then the defendant No.1 executed Ex.A.1 and delivered the possession of the suit schedule property.

15. The appellants/defendants set up a specific plea that during the lifetime of 1st defendant, he executed a Gift deed in favour of 4th defendant on 23.03.1995, and therefore, on the date of agreement of sale i.e. 05.10.1995, the deceased defendant No.1 is not the owner of the suit schedule property and therefore the plaintiff is not entitled for specific performance of agreement of sale.

16. A perusal of the evidence of PWs 1 to 3 and Exs.A.1 and A.22, the plaintiff proved his case that the defendant No.1 agreed to sell the suit schedule property under Ex.A.1 and delivered possession to the plaintiff. Now, the burden lies on the defendant No.1 that on 23.03.1995 itself he executed a registered Gift deed in favour of his son (4th defendant) who is deaf and dumb and delivered possession to him, and also the gift was accepted. The defendant No.1 was examined as DW1 and Ex.B.1 was marked, but he was not available for the cross-examination, as such his evidence was not considered. DW2, though examined, he did not state anything about Ex.B.1 Gift settlement deed. Considering the oral and documentary evidence on record, the trial Court as well as the appellate Court held that the plaintiff is entitled for specific performance of an agreement of sale

dated 05.10.1995 and directed the defendants to execute the Sale deed in favour of the plaintiff.

17. The main contention of the appellants is that the trial Court as well the first appellate Court have not considered Ex.B.1, which is a registered Gift deed and relied upon a case law reported in *Pagadala Bharathi and another Vs. J.Radha Krishna*^[1], wherein this Court held as follows:

“8. Points:

Unfortunately, the Courts below have not gone into the question as to whether the gift deed can be cancelled or not and as to whether the reasons given for cancellation of the gift deed are valid and recognized under law. Both Courts below have proceeded on the premise that there is no proof of the gift deed and the trial Court has found in view of the subsequent execution of the Will, the gift deed has no validity.

9. Section 122 of the Transfer of Property Act, 1882 (for short, ‘the Act’) defines valid gift, which is as follows:

125. “Gift” defined.- “Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptable when to be made. – Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.”

and finally contended that the defendant No.4 is the absolute owner of the suit schedule property and the plaintiff is not entitled for specific performance and this aspect is not considered by both the Courts below, and prayed the Court to set aside the judgments of the trial Court as well as the appellate Court.

18. On the other hand, the learned counsel for the first respondent contended that the trial Court as well as the first appellate Court clearly

held that the deceased defendant was examined as DW1 and got marked Ex.B.1, but he was not present for cross-examination as he died, as such his evidence was closed. It is also argued that to defeat the case of the plaintiff, Ex.B.1 Gift deed was executed which is a sham and nominal and not acted upon, because the defendant No.4 is not only a deaf and dumb and also mentally retarded person and on his behalf, nobody accepted the gift, as such it is not a valid gift.

19. Admittedly, after the death of the first defendant, Ex.B.1 was not marked by DW2 as DW1 died and no opportunity was provided for the plaintiff for cross-examination on Ex.B.1. Therefore, though Ex.B.1 was filed, it was not considered for the above reason. At no point of time, the deceased defendant nor his sons raised any objection that the plaintiff took their signatures and created the alleged agreement of sale and set up a false claim. This fact was first time raised in the Written Statement when the plaintiff filed the suit for specific performance of an agreement of sale. No notice was issued by the defendants raising the above contention. In the absence of such evidence, it is proved by the plaintiff that the first defendant executed an agreement of sale for selling the suit schedule property on 05.10.1995 and received the entire sale consideration of Rs.55,000/- and delivered the possession to the plaintiff. Therefore, both the Courts concurrently gave a finding and the appellants failed to raise any substantial question of law in the second appeal. Further, the plaintiff clearly stated that he was ready and willing to perform his part of contract and both the Courts rightly allowed the claim of the plaintiff. Hence, I do not find any wrong appreciation of evidence or incorrect findings in the judgments of both the Courts.

20. For the reasons stated above, the substantial questions of law urged on behalf of the appellants is not tenable and in fact there is no substantial question of law involved in this case and all the submissions are based on the factual aspects and on the oral and

documentary evidence. Hence, the Second Appeal is devoid of merit and is liable to be dismissed, as no substantial question of law involved in this case.

21. Accordingly, the Second Appeal is dismissed. No costs. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

APRIL 18, 2016.

Anr

THE HON'BLE SMT.JUSTICE ANIS

SECOND APPEAL No. 573 OF 2015

18.04.2016

Anr

[\[1\]](#) 2013(2) ALD 373