

HON'BLE SMT JUSTICE ANIS

SECOND APPEAL No.684 OF 2002

J U D G M E N T:

This Second Appeal is directed against the judgment and decree dated 18.09.2001, passed in A.S.No.165 of 1988, by the Additional Senior Civil Judge, Narasaraopet, whereby and whereunder the learned Additional Senior Civil Judge has allowed the appeal setting aside the judgment dated 01.09.1998, passed in O.S.No.503 of 1982, by the Principal District Munsif, Sattenapalli.

The second appellant herein is the legal heir of the second defendant (first appellant herein), first respondent herein is the plaintiff and second respondent herein is the first defendant in O.S.No.503 of 1982. The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

The brief averments of the case are that the plaintiff filed the suit for recovery of possession of the plaint schedule property and for future profits from the defendants. According to the plaintiff, he is the only son of first defendant and late Venkata Subbaiah. Plaintiff's father died on 28.08.1979 intestate. Plaintiff is the only male issue born to the first defendant and late Venkata Subbaiah. In the year 1954, mother of the plaintiff i.e., first defendant filed a suit against her husband and some others for possession of some

properties in O.S.No.25 of 1954 and the same was compromised and a compromise decree was passed on 20.09.1957. The first defendant and her husband late Venkata Subbaiah i.e., parents of the plaintiff are parties to the compromise. According to the said compromise decree, schedule property was given to father of the plaintiff late Venkata Subbaiah with limited rights to be enjoyed by him during his life time without any power of alienation and after his death, the property should devolve upon the male issue of the first defendant. Plaintiff was born to late Venkata Subbaiah and first defendant prior to compromise decree and the compromise intended to the benefit of the male issue i.e., plaintiff. By virtue of the vested remainder right created for male issue to enjoy the property, the plaintiff is entitled to recover the said property after the death of his father being his only son. The first defendant in collusion with her husband late Venkata Subbaiah sold the plaintiff schedule property on 20.04.1963. Late Venkata Subbaiah has no right to sell the property to the second defendant. Therefore, the said sale is void and does not bind the plaintiff. The sale deed is invalid. The plaintiff got issued a registered notice to the defendants and first defendant gave a false reply. Hence, the suit.

The first defendant remained *ex parte*.

The second defendant filed a written statement admitting the relationship of the plaintiff with first defendant and late Venkata Subbaiah and stated that the terms of the compromise decree passed in O.S.No.25 of 1954 by the Sub-Court, Narasaraopet are not correctly set out in the plaint. Under the compromise decree, it is specifically stated that plaintiff's father can sell Ac.2.00cents of land for the purpose of meeting the marriage expenses of the plaintiff's sister. Plaintiff's father and mother sold the schedule property to meet the marriage expenses of plaintiff's sister Vardhanamma. The suit land was under the lease of one Sekhamuri Rama Lingaiah. Plaintiff's parents sold the suit property to the second defendant for valuable consideration of Rs.1,800/-, executed a registered sale deed on 20.04.1963 and put him into possession. Since then, second defendant is in possession of the property. The second defendant denied the allegation that the sale deed in his favour is void. According to the second defendant, suit is not maintainable without setting aside the sale deed dated 20.04.1963. The second defendant has been in possession and enjoyment of the suit schedule property since 20.04.1963. Therefore, suit is barred by limitation. Plaintiff, who was aged 31 years at the time of filing suit, cannot maintain the suit now. Plaintiff has no cause of action to file the suit. The second defendant, who is in an uninterrupted possession of the suit property

over more than 12 years, has perfected his title by adverse possession and finally prayed the Court to dismiss the suit.

Basing on the pleadings, the trial Court framed three issues. Plaintiff examined as PW.1 and second defendant examined as DW.1. Exs.A1 to A4 were marked on behalf of the plaintiff and Ex.B1 was marked on behalf of the second defendant.

The trial Court after considering the oral and documentary evidence dismissed the suit filed by the plaintiff and held that plaintiff is not entitled to recover the suit schedule property basing on invalid and unenforceable compromise decree. Aggrieved by the judgment of the trial Court, the plaintiff filed the appeal before the Additional Senior Civil Judge, Narasaraopet in A.S.No.165 of 1988. On 18.09.2001, the first appellate Court allowed the appeal filed by the plaintiff and set aside the judgment of the trial Court.

Aggrieved by the reversal judgment of the first appellate Court, the legal representative of the second defendant filed this second appeal on the following substantial questions of law.

1. Whether the learned Addl. Senior Civil Judge is justified in reversing the well considered judgment and decree passed by the learned Principal District Munsif?
2. Whether the learned Senior Civil Judge is justified in giving benefit under Article 65 of the Limitation Act to

the plaintiff by circumventing the provisions of Article 65 holding that the plaintiff need not seek a declaration to set aside Ex.B1 sale deed?

3. Whether the learned Senior Civil Judge is justified in reversing the finding that the first defendant and her husband could sell the suit schedule property to meet the marriage expenses of their daughter which was mentioned in compromise petition and which fact was also admitted by the plaintiff in his evidence?
4. Whether the learned Senior Civil Judge is justified in holding that the second defendant did not plead in his written statement about the admissibility of Ex.A1 though it was raised and argued in the suit? The learned Judge failed to see that Ex.A1 is not admissible under law?

The learned counsel appearing for the appellants argued that the plaintiff filed the suit for recovery of possession of the plaint schedule property and for future profits and the said suit was rightly dismissed by the trial Court after considering the oral and documentary evidence on record and that plaintiff's mother filed O.S.No.125 of 1954 against her husband and some other persons and a compromise decree was entered between the parties in the suit. Parents of the plaintiff sold the suit schedule property to the appellant/second defendant under Ex.B1 to meet the marriage expenses of plaintiff's sister Vardhanama. There is no dispute about the execution of Ex.B1 in favour of the appellant/second defendant and plaintiff was born in the year 1951, attained majority in the year 1972 and plaintiff's father

died in the year 1979. Plaintiff ought to have filed the suit in the year 1975, but he filed the suit in the year 1982 for recovery of possession and for future profits without any right. The compromise decree enables the parents of the plaintiff to alienate the property to meet the marriage expenses under clause-III and plaintiff cannot challenge the alienation covered by Ex.B1 dated 28.04.1963 after 19 years, as such it is barred by limitation. Even Article 65 of the Limitation Act is not available to the plaintiff and finally argued that plaintiff himself admitted the possession of the appellant/second defendant and plaintiff is not entitled to recover the possession of the suit schedule property and finally prayed the Court to allow the appeal by setting aside the judgment and decree passed in A.S.No.165 of 1988 and by confirming the judgment passed in O.S.No.503 of 1982 by the trial Court and relied on the following case laws:

- (1) ***Narayan v. Babasaheb and others***¹
- (2) ***B. L. Sreedhar and others v. K.M. Munireddy (dead) and others***²
- (3) ***Pidikiti Venkatarathnam v. Dr. Ramanavarapu Sampath Kumar***³ and
- (4) ***Parwatabi v. Sonabai and others***⁴.

On the other hand, the learned counsel for the first respondent/plaintiff argued that after the death of father of the plaintiff, a right has accrued to the plaintiff to claim the

¹ 2016 (3) ALD 217 (SC)

² (2003) 2 SCC 355

³ 2010 (5) ALT 136

⁴ AIR 1997 SC 381

suit schedule property and the terms of the compromise enables the parents of the plaintiff to sell Ac.2.00 of the 'A' schedule land situated at Sattenapalli, for the performance of their daughter Vardhanamma's marriage, But, the suit schedule property is in in 'C' schedule of the compromise decree. As per the clause-V of the compromise decree, the land at koneru village and item (3) house can be enjoyed by the father of the plaintiff for his life time with limited interest and after his death, the said property shall devolve upon the male issue or the issues. Under the compromise decree, mother of the plaintiff was given liberty to exchange the lands of Konur for lands at Chintapalli in the interest of the minor children. It is also argued that father of the plaintiff was given life estate in 'C' schedule in Item Nos.1 & 3 and vested remainder was given to the male issue. Plaintiff is the only male issue to Venkata Subbaiah and Kotamma and they have given only right of enjoying the property and the mother of the plaintiff was not given right of alienation to the suit schedule property. As per the compromise decree, property mentioned in 'C' schedule are concerned, father of the plaintiff was given lifetime enjoyment without any right of alienation. Therefore, the father of the plaintiff, who sold the property to the appellant under Ex.B1 on 20.04.1963, had no right to dispose of the said property and finally argued that the suit is not barred by limitation as the father of the plaintiff died on 28.08.1979 and as per Ex.A1-compromise decree father of

plaintiff was having limited interest in the suit schedule property and plaintiff filed the suit within 3 years from the date of death of his father. Therefore, suit is not barred by limitation and prayed the Court to set aside the judgment of the trial Court in O.S.No.503 of 1982 and to confirm the judgment of the first appellate Court in A.S.No.163 of 1988 and relied on the following case laws:

- (1) ***G. Annamalai Pillai v. District Revenue Officer and others***⁵
- (2) ***Panni Lal v. Rajinder Singh and another***⁶
- (3) ***T.S. Bellieraj v. Vinodhini Krishnakumar and others***⁷
- (4) ***Ganapati Santaram Bhosale and another v. Ramachandra Subbarao Kulkarni and others***⁸ and
- (5) ***Ajudh Raj and others v. Moti, S/o Mussadi***⁹.

Now the points that arise for consideration before this Court are:

1. Whether the plaintiff is entitled to recover the possession of the plaint schedule property?
2. Whether the suit is barred by limitation?
3. Whether appellants proved any substantial question of law involved in the appeal?
4. To what relief?

P O I N T S: From a perusal of the oral evidence of plaintiff and second defendant and the documentary evidence produced by both sides, it is evident that plaintiff filed the suit for recovery of possession of suit schedule property on

⁵ (1993) 2 SCC 402

⁶ (1993) 4 SCC 38

⁷ AIR 2004 Madras 319

⁸ AIR 1985 Karnataka 143

⁹ AIR 1992 SC 1600

the ground that the registered sale deed dated 20.04.1963 for the suit schedule property in favour of the second defendant by the first defendant and her husband is not binding on the plaintiff and for recovery of possession of the said suit schedule property and also for future profits.

A perusal of the record shows that first defendant is the mother of the plaintiff, and plaintiff filed O.S.No.25 of 1954 on the file of the Subordinate Court, Narasaraopet against her husband and others. The said suit was ended in compromise and a compromise decree was passed. The main contention of the plaintiff is that his mother and father had no right to convey a better and valid title to the second defendant by virtue of the clause in Ex.A1 compromise decree that they have only right to enjoy the property during their life time without right of alienation and as such the appellant/second defendant cannot get a title to the suit property. As per the evidence of PW.1, he is the only son to his parents. His father Venkata Subbaiah died on 28.07.1979 and he was born on 01.10.1951. He was born by the date of Ex.A1 compromise decree and also Ex.B1 the sale deed dated 20.04.1963 in favour of the appellant/second defendant. It is the case of the plaintiff that his maternal uncle only looked after him even in his childhood and he was brought up by his family and his parents never cared him. Plaintiff is working in R & B Department and he admitted in his cross examination that the suit schedule property is not the subject matter of

O.S.No.25 of 1954 on the file of the Subordinate Court, Narasaraopet. As per the record, the suit schedule property admeasuring Ac.2.00 is the part of the total extent of Ac.6.74cents covered by item No.1 of 'C' schedule property in Ex.A1. The 'C' schedule property containing the property in Koneru village is not the subject matter of O.S.No.25 of 1954 but the said property was included in compromise decree. As per the compromise decree, clause-III of Ex.A1 is to the effect that the plaintiff's mother and father are empowered to sell Ac.2.00 of land in 'A' schedule property for meeting the marriage expenses of their daughter Vardhanamma. Clause-VI of the compromise decree Ex.A1 is to the effect that the dry land of Koneru village i.e., item No.1 of 'C' schedule property was given to the father of the plaintiff for enjoyment during his lifetime without any right of alienation and after his death to devolve on the male issues of the parents of the plaintiff. Basing on the said clause-VI of the compromise decree, plaintiff filed the present suit three years after the death of his father on the ground that he became the absolute owner of item No.1 of the 'C' schedule property total admeasuring Ac.6.74cents which includes the suit schedule property after the death of his father in August, 1979 and he is entitled to recover the possession of the property.

It is relevant to mention clause-VI of Ex.A1, which shows there are two terms. The first term shows that the plaintiff's mother was empowered to sell the Koneru land,

which includes the suit land for the benefit of minor children and the second term shows that plaintiff's mother can purchase land in Chintapalli from the sale proceeds of Koneru land.

According to the plaintiff, after the death of his father, he became the absolute owner of the total extent of the land situated in Koneru village and he is entitled to recover the same from appellant/second defendant. As per the evidence of plaintiff/PW.1, he became major after October, 1969 and he did not file the suit within three years from the year 1969 after he became major. His contention is that he filed the suit three years after his father's death and he is empowered to file the suit within 12 years after the death of his father and wants to take shelter under Article 65 of the Limitation Act.

It is nodoubt, under Article 60 of the Limitation Act, a transfer by a guardian can be attacked by the major by filing the suit within 3 years from the date of attaining majority. Plaintiff admitted in his evidence that his father informed him about the transfer of suit land to the second defendant under Ex.B1 and he sold away the remaining lands showing one of the boundary as the land of second defendant. Therefore, this admission of the plaintiff is clear that he had knowledge about the alienation of the suit land by his father. Therefore, plaintiff ought to have filed the suit within three years from

the date of becoming major, but not waiting 12 years after the death of his father.

The other contention of the appellant is that the compromise decree Ex.A1 was not registered. Therefore, it cannot be enforced as a decree. Admittedly, there is no evidence placed by the plaintiff to show that Ex.A1 compromise decree was registered by the parties. In order to make the compromise enforceable, the requirement of Section 17(2)(6) of the Registration Act, 1908 has to be complied with. Therefore, Ex.A1 compromise decree is inadmissible in evidence. It is within the knowledge of the parties in O.S.No.25 of 1954 that the compromise decree is to be registered. Clause-VII of the compromise petition reads to the effect that lands at Ootukuru village admeasuring Ac.1.37cents shall be sold and from out of the consideration the expenses of registration of compromise decree shall be meted out and balance of the amount shall go to the children of the parents of the plaintiff. Therefore, the parties to Ex.A1 compromise decree are quite aware that they should get the compromise decree registered and they also kept the amount to register the document.

The lower appellate Court erroneously held that it can be inferred that the compromise decree was submitted for registration. If this contention is taken into consideration, Ex.A1 should have been registered and plaintiff should have

been filed the registered document. A perusal of Ex.A1 shows that it is not a registered compromise decree. Therefore, it cannot be acted upon. In order to make the compromise decree enforceable the requirement of Section 17(2)(6) of the Registration Act, 1908 has to be complied with. In the present case, the requirement is not fulfilled either by the parents of the plaintiff or by the plaintiff himself. Therefore, the trial Court rightly held that the compromise decree is not enforceable under law.

The trial Court also held that the suit is barred by limitation as plaintiff failed to file the suit to recover the suit schedule property from the second defendant within three years from 1969 when he attains majority and when he has vested interest in the property during the lifetime of his father. On the other hand, the first appellate Court took a contrary view that Article 60 of the Limitation Act, 1963 has no application, whereas Article 65 of the Limitation Act, 1963 applies to the facts of the present case and held that the suit is not barred by limitation.

It is also held that plaintiff can file the suit for possession within 12 years from the date of the death of his father Venkata Subbaiah under Article 65 of the Limitation Act, 1963. As per the record, plaintiff was a minor by the date of Ex.B1 sale deed executed by his parents in favour of second defendant. Plaintiff born in the year 1951 and he

became major after October, 1969. Plaintiff failed to file the suit to recover the suit schedule property within three years from 1969 after he became major. It is his connection that his parents does not have right to alienate the suit schedule property to the third parties and his father was given with limited rights to be enjoyed by him during his lifetime without any rights of alienation and thereafter to devolve on the male issues of the plaintiff's parents.

The learned counsel for appellants strongly relied upon **Narayan's case** (first cited supra), wherein the Hon'ble Supreme Court held as follows:

"26. A close analysis of the language of Article 60 would indicate that it applies to Suits by a minor who has attained majority and further by his legal representatives when he dies after attaining majority or from the death of the minor. The broad spectrum of the nature of the Suit is for setting aside the transfer of immovable property made by the guardian and consequently, a Suit for possession by avoiding the transfer by the guardian in violation of Section 8(2) of the 1956 Act. In essence, it is nothing more than seeking to set aside the transfer and grant consequential relief of possession.

27. There cannot be any doubt that a Suit by quondam minor to set aside the alienation of his property by his guardian is governed by Article 60,. To impeach the transfer of immovable property by the Guardian, the minor must file the Suit within the prescribed period of three years after attaining majority."

It is an admitted fact that as per the compromise decree father of the plaintiff was authorized to sell Ac.2.00 of lands situated at Chintapalli for meeting the marriage expenses of his sister Vardhanamma. It is also an admitted fact that after the death of his father plaintiff sold away the house property and he was not in possession of any properties covered by the compromise decree Ex.A1. PW.1 also never cultivated any

properties nor had any physical possession either during or after the lifetime of his father. It is argued by the learned counsel for the defendant that the plaintiff was treated as person excluded from the joint family of the parents of the plaintiff. This is evident from the recitals of Ex.A1 compromise decree, wherein the name of Vardhanamma was referred and plaintiff's name was not referred in the said compromise decree though the plaintiff was born in the year 1951. This contention of the defendant is evident from the evidence of PW.1, who in his evidence admitted that his parents never cared him and he was only brought up by his maternal uncle since his childhood and he continued in his house since then.

Thus, the findings of the trial Court that the suit is barred by limitation under Article 60 of the Limitation Act, 1963 has to be upheld and the contention of the plaintiff that Article 65 of the Limitation Act, 1963 applies cannot be considered. Further, the compromise decree was not registered under the Registration Act, 1908. Therefore, it cannot be acted upon and parents of the plaintiff being the owners of the property are entitled to sell the property. Therefore, the findings of the trial Court in O.S.No.503 of 1982 is confirmed and the findings of the first appellate Court in A.S.No.165 of 1988 is liable to be set aside by allowing the appeal.

Accordingly, the second appeal is allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

Date: 17.09.2016
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