

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL NO. 575 OF 2016

JUDGMENT:

This Second Appeal under Section 100 of CPC is filed challenging the concurrent findings recorded by both the trial Court and Appellate Court in O.S.No. 1591 of 2008 on the file of V Senior Civil Judge, City Civil Court, Hyderabad as confirmed by XXV Additional Chief Judge, City Civil Court at Hyderabad granting decree for recovery of possession of the schedule property.

2. For the sake of convenience, the parties to the appeal are referred to as they ranked in suit, hereinafter, throughout the judgment.

3. The plaintiff filed suit for recovery of possession directing the defendant to vacate and also deliver the suit schedule property and pay damages at the rate of 5,000/- per month from the date of suit till the date of delivery, alleging that the plaintiff is the absolute owner of suit schedule property i.e. premises bearing M.No. 1-5-184, admeasuring 30 sq.yards situated at Zamistanpur, Musheerabad, Hyderabad having purchased the same under a registered sale deed dt. 21.4.1972 in an extent of 150 square yards.

4. While matter stood thus, plaintiff sold an extent of 120 square yards to three different individuals and she retained the portion

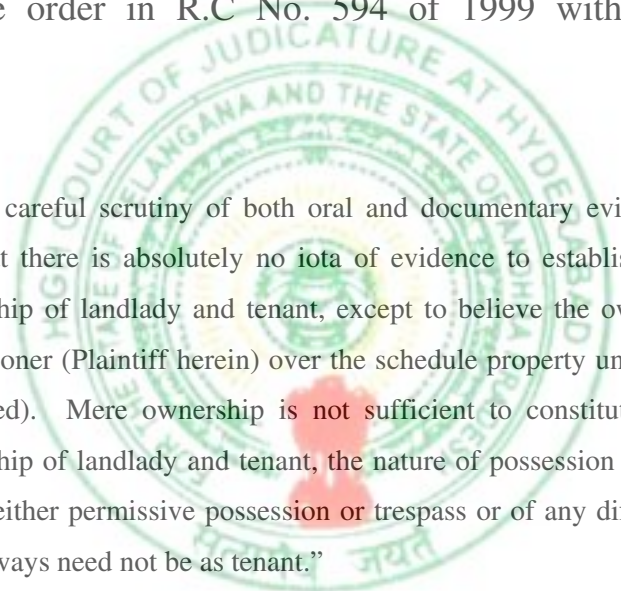
bearing No. 1-5-184 admeasuring 30 sq. yards for herself. She allowed her mother to stay in the suit property. Her possession was permissive. After demise of her mother, she also allowed one of her sister by name Yadamma and her children to stay in the suit house till 1994. The defendant requested her to let out the suit premises for the purpose of providing education to her daughter at Hyderabad since the defendant was a native of Nalgonda and her husband was working in APSRTC at Nalgonda. Accordingly, plaintiff permitted the defendant's daughter to reside in the suit house on a nominal rent of Rs. 300/- per month in December 1994 under oral lease, due to close relationship.

5. Later, the defendant committed default in payment of rent for nine months but even after demand by the plaintiff, defendant refused to pay arrears of rent. Thereupon, the plaintiff got issued a legal notice on 24.10.1999 demanding the defendant to pay arrears of rent and also to vacate the premises. Taking advantage of relationship and failure to execute any written lease, she gave reply dated 31.10.1999 denying relationship of landlady and tenant between them.

6. Thereupon, the plaintiff filed R.C.No. 594 of 1999 on 10.11.1999 before the II Additional Rent Controller, for eviction of the defendant and the same was dismissed holding that the plaintiff failed to establish the relationship of landlady and tenant.

7. During the pendency of Rent Control Case, defendant issued notice dated 4.1.2000 alleging that the defendant was minor at the time of execution of sale deed conveying suit property in favour of plaintiff and she sought for cancellation of the sale deed for which a suitable reply dated 14.1.2000 was issued.

8. Against the dismissal of Rent Control Case No. 594 of 1999, an appeal in R.A.No. 212 of 2001 before the Chief Judge, City Small Causes Court, Hyderabad was preferred, which ended in dismissal affirming the order in R.C No. 594 of 1999 with the following observation:



“On the careful scrutiny of both oral and documentary evidence, it is clear that there is absolutely no iota of evidence to establish the jural relationship of landlady and tenant, except to believe the ownership of the petitioner (Plaintiff herein) over the schedule property under Ex. P.1 (sale deed). Mere ownership is not sufficient to constitute the jural relationship of landlady and tenant, the nature of possession of a person may be either permissive possession or trespass or of any different kind and it always need not be as tenant.”

9. During the pendency of Rent Appeal No. 212 of 2001, the defendant filed O.S.No. 5628 of 2001 on the file of XII Junior Civil Judge, Hyderabad for cancellation of sale deed dated 22.4.1972, executed by the defendant herein in favour of plaintiff alleging that the defendant was minor at the time of execution of sale deed and the said suit was dismissed on 27.11.2006. In the judgment, the Court observed as follows:

“As on the date of the execution of the original of Ex. A1 of suit property if the date of birth of the plaintiff is taken as 24.07.1954 the plaintiff was

three months, short of attaining the majority and even then also, at this length of time she can agitate for the cancellation of the original of Ex. A1 which in any event is time barred and as such there is no cause of action for filing this suit.”

10. The defendant, subsequent to dismissal of said suit, approached the plaintiff along with her another sister Yadamma, requested six months time to vacate the suit premises as the husband of defendant died she has to receive death benefits of her husband from APSRTC. But she did not vacate the premises therefore, filed the suit for aforesaid relief.

11. The defendant filed detailed written statement denying the allegations made in the plaint inter alia contending that the sale deed document No. 1549/1972 dt. 21.4.1972 is void document as she was minor, when the document was executed. The property originally belonged to defendant's father and strangely the document as it exists was signed by the defendant as a minor and her mother and another sister, whereas one more sister was left out by the plaintiff from the so called registration of the property in her name. There is any amount of illegality in execution of the sale deed, on the basis of which the plaintiff is claiming ownership and having sold 120 square yards to three different individuals without her knowledge and consent. The defendant being an illiterate was unaware of the existence of the registered document and her signature was obtained on the document of sale without informing her, true facts. The defendant was living in the suit premises as the premises belonged to her father and she was

not in permissive possession as alleged by the plaintiff and therefore, the question of payment of rent and damages does not arise and consequently the plaintiff is not entitled to claim any relief in the present suit.

12. Further it is contended that the judgment passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in R.A.No. 212 of 2001 has attained finality wherein subsisting jural relationship of landlady and tenant was not accepted. Therefore, she is not entitled to claim recovery of possession and prayed for dismissal of the suit.

13. Basing on the above pleadings, the trial Court framed the following three issues:

“1. Whether the plaintiff is entitled for eviction of the defendant from the suit schedule property?

2. Whether the plaintiff is entitled for damages as claimed in the plaint?

3. To what relief?”

14. During the trial, on behalf of the plaintiff, PW-1 was examined and Exs. A1 to A-13 were marked. On behalf of the defendant, defendant herself was examined as DW-1 and Exs. B1 to B-23 were marked.

15. Upon hearing argument of both the counsel, the trial Court passed decree in favour of plaintiff holding that the plaintiff is the

owner of the property and she is entitled to recover possession and directed the defendant to vacate the suit premises and to deliver the suit schedule property.

16. Aggrieved by the decree and judgment passed by the trial Court, the defendant in the suit preferred first appeal A.S.No. 40 of 2012 before the XXV Additional Chief Judge, City Civil Court, Hyderabad, and the same was dismissed by the decree and judgment dated 26.4.2016 affirming the judgment and decree passed by the trial Court.

17. The present appeal is filed aggrieved by the decree and judgment of the first appellate Court raising several contentions regarding legality of the judgment and the rent control proceedings and the plaintiff is not entitled to claim recovery of possession on the same ground. But defendant/appellant formulated the substantial question of law (a) to (f) but none of them are substantial questions of law.

18. The first and foremost contention of the counsel for the appellant is that the plaintiff is not entitled to recover the possession of the property without seeking declaration of title to the schedule property in view of dismissal of R.C No. 594 of 1999 and appeal in R.A. No. 212 of 2001. It is the case of the plaintiff that she purchased the entire property from her sisters and mother, including the plaintiff under registered sale deed, later sold away 120 square yards to

different individuals. Ex. A1 is the sale deed dated 22.4.1972 executed by the defendant and her sisters jointly in favour of the plaintiff. But the only contention before the Court is that by the date of execution of Ex. A1 she was minor and therefore, it is not binding on her. No doubt a minor is incompetent to execute the sale deed and it is only voidable and the minor, to annul the document can file a suit within three years after attaining majority in view of Section 6 of Limitation Act, but she filed a suit O.S.No. 5628 of 2001 and according to the evidence before the trial Court she was born on 24.7.1954 and if the date of birth mentioned by the defendant is accepted she might have attained majority by 24.7.1972 but the first suit was filed in the year 2001 i.e., at last after 29 years after she attained majority and accordingly the suit was dismissed. Filing of suit O.S.No. 5628 of 2001 itself by the defendant suffices that she executed original Ex. A1 in favour of plaintiff but her attempt to prove invalidity of the document became futile in view of dismissal of the suit by the trial Court on the ground of limitation. Thus, the sale deed was upheld by the Court in O.S.No. 5628 of 2001. Even in the rent control proceedings, the rent controller and the appellate Court have made clear observations that the plaintiff is the owner of the property and mere ownership is not sufficient to constitute the jural relationship of landlady and tenant, the nature of possession of a person may be either permissive possession or trespass or of any different kind and it always need not be as tenant. These findings are attained finality. But the finding recorded by the Rent Controller as

affirmed by the appellate Court so also the judgment and decree in O.S. No. 1591 of 2008 also attained finality. Therefore, the ownership of the plaintiff is affirmed by all the Courts and the contention of the defendant that the sale deed is not valid to the extent of her share was thrown overhead by the trial Court itself and no appeal is preferred against the same, therefore, the present suit is filed for recovery of possession under Section 5 of Specific Relief Act, 1963. When the execution of the document Ex. A1 was admitted till it is set aside by a competent Court, the same is valid under law and such right cannot be taken away by tenant that she was a minor by the date of execution of Ex. A1. Therefore, the plaintiff established her title to the property by examining herself producing original sale deed Ex. A1 besides producing Ex. A8, CC of judgment in O.S.No. 5628 of 2001 filed by the defendant against the plaintiff, where her claim was rejected by the Principal Rent Controller, Hyderabad. Hence, the plaintiff need not seek relief of declaration of title under Section 34 since her title is not under cloud. Therefore, the contention that the plaintiff is not entitled to seek recovery of possession without seeking declaration is without substance. Hence, on this ground the Second Appeal cannot be admitted.

19. The other contention is that there is no cause of action for the suit. As seen from the material on record, there was legal correspondence between the plaintiff and defendant and the plaintiff is always demanding the defendant to vacate the premises and resorted

to litigation by filing R.C.No. 594 of 1999 and the appeal R.A.No. 212 of 2001 and also issued notice demanding the defendant to vacate the premises but no purpose was served. No doubt, dismissal of suit filed by the defendant in O.S.No. 528 of 2001 on the file of Principal Rent Controller, Hyderabad would not give rise to any cause of action but mere demand is sufficient to give rise to cause of action to seek the relief of recovery of possession against the defendant. The cause of action is not a single fact and it is bundle of facts that means the facts which would give rise to claim relief in the suit. Therefore, the plaintiff discloses the cause of action for the relief claimed in the suit. As far as the cause of action is concerned, the cause of action arose for the suit on 27.11.2006 when the suit O.S.No. 528 of 2001 filed by the defendant was dismissed. No doubt, the cause of action mentioned in the plaintiff is the basis for filing the present suit for the reason that the suit filed by the defendant was dismissed and thereby the title of the plaintiff was upheld affirming the sale transaction covered by Ex. A1 on the date of dismissal of her suit. The defendant created cloud, if any, over the title of the plaintiff was removed or vanished and from that day the plaintiff is entitled to recover the possession of the property, therefore, the cause of action mentioned in the plaintiff is sufficient to recover the possession of the property which give rise to cause of action in filing the suit.

20. The suit is filed claiming relief under Section 5 of Specific Relief Act. According to Section 5 of Specific Relief Act, a

person entitled to the possession of specific immoveable property is extended to recover it in the manner provided by the Code of Civil Procedure, 1908. The plaintiff produced voluminous documents more particularly the original of Ex. A1 to establish her title to the property and her title was confirmed by the Principal Rent Controller, Hyderabad in O.S.No. 528 of 2001. In such a case, when the defendant is in possession of suit property did not set up any adverse claim by setting up hostile title against the owner/plaintiff herein, but contended that she is continuing in possession. According to Article 65 of Limitation Act, the plaintiff is entitled to recover possession of immovable property within 12 years from the date when the person in possession set up his title claiming adverse possession, till today the defendant did not set up any such claim. Therefore, the suit claim of the plaintiff is within time and consequently the defendant who is in unlawful possession of the property is liable to vacate and deliver the vacant possession of the schedule property.

21. Both the trial Court and appellate Court after an elaborate consideration of both oral and documentary evidence rightly concluded that the plaintiff is the owner of the property. More particularly in view of dismissal of suit filed by defendant O.S.No. 528 of 2001 by the Principal Rent Controller, Hyderabad, passed a decree directing the defendant to deliver vacant possession of the schedule property within the specified time.

22. As discussed above, the defendant without seeking declaratory relief is not entitled to claim possession was not raised in the written statement specifically, in the absence of any factual foundation in the plaint before the trial Court. Such contention cannot be entertained at the stage of Second Appeal. Therefore, I find no illegality in the decree and judgment passed by the trial Court in O.S.No. 1591 of 2008 as confirmed by the appellate Court in A.S.No. 40 of 2012 warranting interference by this Court, in the Second Appeal since the jurisdiction of this Court is limited to a substantial question of law under Section 100 of CPC.

23. In view of the above aforesaid discussion, I find no ground to set aside the concurrent findings recorded by both the courts below and accordingly, the Second Appeal is dismissed at the stage of admission but without costs.

24. As a sequel thereto, miscellaneous petitions, pending if any, shall stand closed.

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JUSTICE M. SATYANARAYANA MURTHY, J

Date: 09.09.2016

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