

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A.No. 31 OF 1999

JUDGMENT:

The present appeal is filed assailing the judgment and decree dated 22.06.1998 in O.S.No.1153 of 1986 on the file of the II Additional Senior Civil Judge, City Civil Court, Hyderabad, whereby and whereunder, the suit filed by the appellant for declaration of his title over the plaint schedule property bearing Municipal No.15-1-420 situated at Feelkhana, Hyderabad, constructed in an area of 122 square yards within specific boundaries shown in the schedule, by virtue of the Letter of Authority-Successor said to have been executed by one Smt. Balamani in his favour on 30.05.1981 and consequential relief of putting him in possession of the said property by evicting the defendants/respondents, was dismissed by the Court below.

2. The relevant facts for disposal of the present appeal are that Smt. T. Balamani, wife of late Sri Manikyam, has executed the Letter of Authority-Successor in favour of the plaintiff on 30.05.1981 and in the said document, both the defendants said to have signed as witnesses, with a view to collect the rents on her death. The said Balamani died on 07.03.1985 and the plaintiff succeeded to the said property as the absolute owner. When a notice was got issued by the plaintiff to the defendants to vacate the premises and to hand over the possession, it appears that the said notice was returned.

3. The plaintiff claimed that he developed the plaintiff schedule property by investing huge amount and for that reason, late Balamani gave the suit house to him.

4. The plaintiff also referred to a suit filed by him in O.S.No.3366 of 1985 on the file of the IV Additional Senior Civil Judge, City Civil Court, Hyderabad, wherein the defendants herein have set up a plea of settlement deed. In that context, the plaintiff claims that the settlement deed dated 12.12.1984 is forged and created document. Thus, the reliefs are claimed.

5. The first defendant filed his written statement denying the forgery and fabrication attributed to them concerning the settlement deed stating that northern portion has fallen to his share and the southern portion was given to the second defendant and that on the death of Balamani, they got the property as beneficiaries under the settlement deed. They set up the plea that the Letter of Authority-Successor is a created document and they never signed therein and such a document was never executed in favour of the plaintiff.

6. The second defendant also filed his written statement on the same lines of the written statement filed by the first defendant. They questioned the very maintainability of the suit on an inadmissible document. While stating that the suit filed by the plaintiff in O.S.No.3366 of 1985 was dismissed, vacating the injunction granted in I.A.No.899 of 1985, they sought to dismiss the suit.

7. The Court below has settled as many as 13 issues, which are thus:

1. Whether the plaintiff is entitled to the declaration and possession as sought for?
2. Whether Smt. T. Balamani had any authority to deal with the suit property exclusively?
3. Whether the plaintiff was only a servant employed by defendants' father to look after their court and office affairs?
4. Whether the letter of authority successor is a "Will", and, if so, whether the plaintiff is entitled to claim any right over the suit property without resorting to the provisions of Indian Succession Act?
5. Whether the registered family settlement deeds interse between Smt. T. Balamani and defendants, are forged and false as alleged by the plaintiff?
6. Whether the mother of the defendants was capable of getting the suit house as alleged in view of the fact that the said house was constructed by defendants father on the land purchased by defendants' grand mother?
7. What is the effect of registered settlement deed dated 12.12.1984 executed by late T. Balamani in favour of defendants?
8. Whether the suit is maintainable without asking the consequential relief in respect of registered settlement deed?
9. Whether the suit is not maintainable in view of the bar under Or.2 Rule (2) CPC?
10. Whether there is any cause of action for the suit?
11. Whether the suit is barred by limitation?
12. Whether the suit property has been correctly valued, and Court fee paid thereon is proper?
13. To what relief?

8. In order to prove the stand taken by the plaintiff, he examined himself as P.W.1 and got marked Exs.A.1 to A.12, which are letter of

authority, publication dated 06.10.1985, copies of notices between the parties and returned cover respectively. The defendants have not stepped into the box. Thus, there is absolutely no evidence at all led by them.

9. The Court below has taken up issues 1 to 12 together for discussion and tendering findings. Having referred to the respective cases of the rival parties, the Court below in paragraph '15' of the judgment dealt on Ex.A.1 in the context of referring to the nature of document and while observing that Ex.A.1 was written on a stamp paper worth Rs.5/-, and the contents of the said letter in paragraph '16' equating with that of a Will on the ground that the attestors were not examined. Also observing that though, Ex.A.1 is deemed to be a Will in its form, it must be proved by cogent and convincing reasons, which the plaintiff did not do and, therefore, dismissed the suit.

10. In the present appeal, in fact when service of notice was not completed on the respondents, substituted service was ordered by publication of notice in newspaper. Even then, the respondents have not entered their appearance.

11. Heard Sri M.V.S. Suresh Kumar, learned counsel for the appellant. None appears for the respondents as stated above.

12. The only submission of the learned counsel for the appellant is, that the Court below ought to have believed Ex.A.1 and in fact, when the defendants have not stepped into witness box and not proved the settlement deed dated 12.12.1984 said to have executed by late Balamani, in view of the stand of the plaintiff that the said settlement

deed was forged and fabricated, the Court below ought not to have dismissed the suit.

13. The points that arise for consideration are:

1. Whether the 'Letter of Authority – Successor' under Ex.A.1 can be construed as a 'Will' and proved by the appellant?
2. Whether the judgment and decree under challenge can be sustained?
3. To what other relief, the appellant is entitled to?

POINTS 1 and 2:

14. At the outset, it is to be mentioned that the Letter of Authority-Successor, marked as Ex.A.1, cannot even be treated as a Will, as it does not satisfy the requirements of an absolute Will, besides not examining any attestor. Though, the defendants stood as witnesses, it is not on record that the plaintiff has made any attempt to summon and examine them for proving Ex.A.1. No reasons have been assigned therefor.

15. Concerning settlement deed dated 12.12.1984, which the plaintiff described as a forged and fabricated document and was brought into existence by the defendants, the entire burden rests on the plaintiff to prove that the settlement deed is a forged and fabricated document and to make wrongful gain, the defendants have brought it into existence in which direction, again, there is absolutely no evidence worth the name except the assertions of the plaintiff as P.W.1.

16. Therefore, the finding tendered by the Court below can be construed as a comprehensive finding on issues 1 to 12, as there is only one document on which the decision is required to be rendered. Therefore, it cannot be viewed as a perverse finding warranting interference, as the said finding was arrived at based on appreciation of evidence on record let in by the plaintiff. There is therefore, no merit in the appeal.

17. The appeal is dismissed. There shall be no order as to costs.

18. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall also stand dismissed.

Date: 16.08.2016
va

A. SHANKAR NARAYANA, J

