

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL MISCELLANEOUS APPEAL No.61 OF 2016

Dated 12-7-2016.

Between:

Arvind Kumar Agarwal.

..Appellant.

And:

Santosh Devi Agarwal and others.

..Respondents.

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CIVIL MISCELLANEOUS APPEAL No.61 OF 2016

JUDGMENT:

This appeal is preferred against order dated 15th December, 2015 in I.A.No.592 of 2015 in O.S.No.847 of 2015 on the file of V Additional Senior Civil Judge, City Civil Court, Hyderabad.

Appellant herein is first defendant in the above referred suit and respondents 1 to 5 herein are plaintiffs and sixth respondent herein is D.2. Parties hereinafter are referred to as arrayed in the suit for convenience.

Plaintiffs filed the above referred suit to declare them as owners of plaint schedule property and consequently, for recovery of possession from defendants and also for consequential permanent injunction restraining D.1 from interfering with plaint schedule property in any manner after adjudicating rights of plaintiffs. They also sought for mandatory injunction directing second defendant to deposit rents on the plaint schedule property to the credit of plaintiffs.

First defendant filed written statement and made counter claim to declare that gift settlement deed executed by Smt.Laxmi Devi in favour of Ravindra Kumar Agrawal dated 15-10-1976 is null and

void and redundant and consequently, declare gift deed executed by said Ravindra Kumar Agarwal dated 29-12-2001 be cancelled as null and void.

In the said suit, I.A.No.592 of 2015 is filed seeking direction to second defendant to deposit the rents pending disposal of the suit, that petition was resisted by first defendant and on a consideration of contentions of both parties, trial court allowed application and directed second defendant to deposit the rents on or before 10th of every succeeding month to the credit of O.S.No.847 of 2015 commencing from December, 2015 pending disposal of the suit. Questioning the said order, D.1 preferred this appeal and this court granted interim stay in favour of appellants on the condition that appellant shall deposit Rs.25,000/- out of rent amount received by him to the credit of the suit O.S.No.847 of 2015.

It is the case of plaintiffs that suit property i.e., three shops and Hall facing the main road are gifted to Ravindra Kumar Agarwal on 15-10-1976 and he enjoyed the property till it was gifted in favour of first plaintiff on 29-12-2001 through registered gift deed dated 29-12-2001 and from that date, first plaintiff is in possession and enjoyment by letting out the same and receiving rents. According to plaintiffs, R.K.Agarwal died on 14-8-2003 and the tenants of the portion facing the road have vacated on their request since there is a proposal for road widening for metro railway project. First defendant who is the younger brother of R.K.Agarwal who was given part of the back portion of the same property came forward to help the plaintiffs in solving the issues relating to the road widening and first defendant without consent of petitioner and without obtaining any Municipal permission made constructions in the property and inducted second defendant as tenant on a monthly rent of Rs.1,45,000/- and taking away the entire amount though plaintiffs are the owners of the property, therefore, the tenant has to be

directed to deposit the amount to the credit of suit.

According to first defendant, his mother Smt.Laxmi Devi purchased 334 square yards in Municipal Survey No.36 bearing Municipal No.1-8-525, Chikadpalli through registered sale deed dated 15-12-1961 and executed registered document in his favour on 31-3-1980 and another document on 29-12-2001 in respect of premises bearing No.1-8-525/A and first plaintiff obtained document dated 15-10-1976 by playing fraud on Laxmi Devi and obtained her signature on the pretext that her signature is required for obtaining electric connection and for mutation purpose. It is further contended that his mother Laxmi Devi executed a will on 3-4-2004 and the same has come in the force on 9-4-2013 and as per this will, first defendant is sole owner of the property and GHMC paid compensation for the property taken for road widening and plaintiffs have no right and title in respect of suit schedule property.

Hard both sides.

Advocate for D.1 submitted that plaintiffs have no right and title over the suit schedule property and there is not even a relief for mesne profits and therefore, seeking direction for deposit of the rent is not at all tenable and that lower court without considering these aspects directed the first defendant to deposit the amount received from the tenant and same is not legal.

On the other hand, advocate for plaintiffs submitted that title of Laxmi Devi is not in dispute but when a registered gift deed was executed in the year 1976 and was acted upon any subsequent documents by Laxmi Devi without cancellation of earlier alienation has no validity and the claim of first defendant is only on the basis of subsequent documents and unless the counter claim for the relief of cancellation of gift deed of the year 1976 is granted, first defendant cannot be permitted to enjoy the fruits of the property. He further submitted that it would

take considerable time for disposal of the suit to safeguard their interest, plaintiffs sought for direction for deposit of the rent and trial court rightly granted such direction which is equitable relief and that there are no grounds to interfere with the same.

Now the point that would arise for my consideration in this appeal is whether the order of trial Court is legal, correct and proper?

POINT:

Admittedly, the property originally belonged to Smt.Laxmi Devi who is no other than the mother of Ravindra Kumar Agarwal and first defendant. It is also not in dispute that Laxmi Devi executed a registered gift deed dated 15-10-1976 conveying the suit property in favour of Ravindra Kumar Agarwal. According to first defendant, that document was obtained by playing fraud on Laxmi Devi and that Laxmi Devi subsequently bequeathed this property in favour of first defendant both by way of gift deed and will, therefore, plaintiffs have no right. The fact remains that the gift deed executed by Laxmi Devi is of the year 1976 and once property was gifted and it was acted upon, donor has no right to make any alienation subsequent to it unless, that document is either cancelled or set aside by any competent court. Till making counter claim in the written statement, no steps are taken for cancellation of gift deed dated 15-10-1976._ So, prima facie, till the document is set aside, legal right over the schedule property is with plaintiffs and simply because, D.1 made some constructions, he cannot claim legal right, till the document dated 15-10-1976 is set aside. These aspects are subject matter of the suit which the trial court has to decide on the basis of evidence. Now the only contention of D.1 is that there is no relief in the plaint claiming mesne profits, therefore, direction given by the trial court for deposit of rents is not legal. But this contention cannot be accepted because in a suit for

possession, decree holder can even file application for determination of mesne profits. Admittedly, the property was let out to D.2 and D.1 is taking away rent from D.2 directly. As the prima facie title and legal right is in favour of plaintiffs, and as entire rent is taken away by D.1, the court below granted direction for depositing of rent to safeguard interest of both parties.

When prima facie title is in favour of plaintiffs, it is not justifiable to allow first defendant to take away the income on the plaint schedule property.

I do not find any wrong in the said direction and on verification of material, and the contentions of both parties, I am of the considered view that the order passed by the trial court is quite reasonable and an equitable order which does not suffer from any illegality.

For these reasons, I am of the view that appeal is devoid of merits and C.M.A. is dismissed giving liberty to both parties to approach trial court to expedite trial. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 12-7-2016._____.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs