

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.213 OF 2000

JUDGMENT:

The unsuccessful plaintiff throughout is the present appellant - V. Sreekishan. He instituted the suit in O.S. No.1665 of 1988 on the file of VIII Assistant Judge, City Civil Court, Hyderabad, against defendant Nos.1 and 2, seeking recovery of possession of plaintiff schedule property, which consists of House bearing Municipal Nos.16-4-491 and 16-4-492, situate at Chanchalguda, Gachibowli, Hyderabad, located in an extent of 200 square yards within specific boundaries mentioned in the plaintiff schedule, and for grant of mesne profits.

2. The appellant herein is the appellant in A.S. No.216 of 1993, on the file of the III Additional Chief Judge, City Civil Court, Hyderabad, and plaintiff in the aforesaid suit, while respondent Nos.1 and 2 are the respondents in the appeal suit and defendants in the aforesaid suit.

3. For the sake of convenience, the parties herein are hereinafter referred to as they were arrayed in the suit O.S. No.1665 of 1988.

4. The plaintiff claims title by virtue of a registered Will, dated 07-08-1986, said to have executed by Smt. V. Ramanujamma, who,

according to the plaintiff, had taken him in adoption after the death of her husband V. Shivaraj, and it is a registered Will, and subsequent thereto, the Town Municipality, Hyderabad, effected mutation registry in his name, and despite issuance of notice, dated 17-04-1987 to vacate the house and to deliver the possession, the defendants did not vacate the same and, on the other hand, a reply was got issued with all false allegations laying a claim that both the defendants are son-in-law and daughter of late Smt. V. Ramanujamma, and since defendant No.2 was adopted by late V. Shivaraj with the consent of his wife Smt. Ramanujamma, she became a legatee as Smt. V. Laxmi Devi, mother of late V. Shivaraj, executed a Will bequeathing the suit schedule property in her favour on 13-08-1959. Hence, the plaintiff laid the suit for the aforesaid reliefs.

5. As against the said claim, respondent Nos.1 and 2 - Defendant Nos.1 and 2 state that the Will, dated 07-08-1986 propounded by the plaintiff is a got up document to grab the suit schedule property and the mutation registry does not confer any right or title, and Smt. V. Ramanujamma, the Testatrix, had no legal right to execute the Will, whose death occurred on 05-03-1987, at the house of one Ramulu, who was son of her maternal uncle located in Pasumamula village, and mere registration of the Will cannot give it a colour of genuine nature.

i) They put forth the plea that late V. Shivaraj taken the 2nd defendant in adoption with the consent of Smt. V. Ramanujamma

and, thus, she became the sole heir and successor of late V. Shivaraj, and her marriage was performed by Smt. Vemula Laxmi Devi, the mother of late V. Shivaraj, with the 1st defendant, and her grandmother Smt. Laxmi Devi bequeathed the suit schedule property by execution of a Will in her favour on 13-08-1959 and, thus, she became the absolute owner subsequent to the death of said Laxmi Devi in 1960. The defendants even set up the plea of perfection of title by long standing and uninterrupted possession. Their claim is that Smt. V. Ramanujamma never lived with the plaintiff, as she went to her relatives house for treatment, where she died and, thus, according to them, the Will said to have executed in favour of the plaintiff is a created document and the plaintiff being an orphan was residing at Ramanujamma's house in the same locality, and that the plaintiff was temporarily accommodated in the house No.16-3-686, and he was in permissive possession thereof. They pleaded that the plaintiff refused to vacate the said premises, and the plaintiff is well-versed in creating documents having contacts with influential persons, brought into existence the said Will with a *mala fide* intention and, therefore, sought to dismiss the suit with exemplary costs of Rs.5,000/-.

6. The learned trial Court basing on the said pleadings, framed as many as four (04) issues thus:

“

1. Whether the will executed by late V. Ramanujamma is true, genuine and correct?
2. Whether the plaintiff is entitled to recover possession of suit property?

3. Whether the suit property belonged to late V. Lakshmi Devi, at any time?
4. Whether late V. Lakshmi Devi executed any will as alleged by the defendants and whether she had any right to do so and whether the said will is true and genuine?
„

7. The learned trial Court elaborately discussed the evidence on record let in by the plaintiff, who examined himself as PW.1, and one P. Bhagya Reddy, attester of the Will as PW.2, Sri Jaffri, an identifying witness to the said Will, as PW.3, and his wife Smt. V. Yadamma, who also stood as identifying witness, as PW.4, and marked Exs.A-1 to A-15. As against which, defendant No.2 examined herself as DW.1 and marked Exs.B-1 to B18.

8. The plaintiff is mainly resting on Ex.A-1, Will, dated 07-08-1986 and the alleged adoption by Smt. V. Ramanujamma, wife of late V. Shivaraj. Whereas, the defendants are resting on Ex.B-2 alleged to be the original Will in Urdu, dated 13-08-1959 said to have executed by late Smt. V. Lakshmi Devi, grand-mother being the mother of late V. Shivaraj, besides pleading adoption.

9. The learned trial Court appreciated the evidence, both, oral and documentary, let in by the rival parties on each of the issues and culling out the probabilities pointed out the suspicious circumstances so far as Ex.A-1 is concerned based on inconsistent evidence and contradictory versions coming from the side of the plaintiff and disbelieved the stand of the plaintiff, holding that the plaintiff failed to

prove not only the adoption, but also execution of Ex.A-1 Will by late V. Ramanujamma on the ground that the suspicious circumstances were not dispelled successfully by the plaintiff.

10. The learned trial Court on issue No.1, having elaborately dealt with numerous circumstances that disfavours the plaintiff for dispelling the suspicious features surrounding the execution of Will as propounded by him in the light of the authorities relied on by both sides, tendered a positive finding that the Will - Ex.A-1 is not a true and genuine document and held it in negative.

i) On issue No.2, recorded a finding that since the plaintiff failed to prove Ex.A-1 and the entire case rests on the finding recorded on Ex.A-1, answered it against him.

ii) On issue No.3, though, in fact, the burden to prove rests on the defendants, however, the learned trial Judge examined the evidence on record related to that issue and recorded a finding that the suit schedule property belonged to late V. Shivaraj only and not to Smt. Laxmi Devi and, accordingly, answered. On issue No.4, held that no satisfactory evidence has been let in to prove due execution of Ex.B-2 by Smt. V. Laxmi Devi in favour of defendant No.2 and, thus, answered the said issue.

iii) Thus, the learned trial Court based on the findings recorded on issue Nos.1 and 2, arrived at the conclusion that the plaintiff is not

entitled for the relief and, accordingly, dismissed the suit directing both the parties to bear their own costs.

11. Aggrieved by the said judgment and decree, dated 30-11-1999, the plaintiff preferred Appeal Suit No.216 of 1993, on the file of the III Additional Chief Judge, City Civil Court, Hyderabad.

12. The relevant point for determination was formulated by the appellate Court in paragraph No.10 and then taken up the respective submissions made by the learned counsel for the appellant and the respondents in paragraph No.11 of the judgment substantially touching the pleas put forth by both parties before the trial Court. The learned Appellate Court having analyzed the evidence, on reappraisal, has pointed out as many as 14 suspicious circumstances which, in its view, were not dispelled by the plaintiff, examining the said features associated with Ex.A-1 in the light of the decision of the Hon'ble Supreme Court in **Satya Pal Gopal Das v. Smt. Panchu Bala Dasi & others**¹ relied on by the learned counsel for the appellant and having distinguished the factual aspect did not agree with the submission of the learned counsel for the plaintiff and tendered finding that the plaintiff has miserably failed to dispel the suspicious circumstances shrouded with, in execution of the Will and thereby affirmed the judgment and decree passed by the learned trial Court.

¹. AIR 1985 SC 500

i) The learned Appellate Court has also examined the case projected by the defendants and held that the defendants also failed to establish the 2nd defendant's adoption, however, observing that the plaintiff is not expected to depend upon the weaknesses of the defendants' case since a heavy duty is cast upon the plaintiff to establish the very execution of the Will - Ex.A-1, and the plaintiff miserably failed to establish his right over the suit schedule property, recorded a finding that in the event of failure to establish the testament, the natural stream of succession under the Hindu Succession Act has to be followed to work out respective rights of the parties and, thus, dismissed the appeal with costs.

13. Again, aggrieved by the judgment and decree passed by the appellate Court, the plaintiff preferred the instant Second Appeal stating in the grounds that the first appellate Court has grossly erred in confirming the judgment and decree of the trial Court in O.S. No.1665 of 1988 and ought to have granted an opportunity to examine the witnesses whose examination was sought by appointment of a Commissioner. The substantial questions of law formulated by the appellant are thus:

“ (a) The Court below failed to note the distinction between execution of a document and registration and that both need not be contemporaneous under section 27 of the Registration Act.

(b) The Court below erred to note that there is unimpeachable documentary evidence to establish the adoption of the appellant which are filed by way of petition under Order 41 Rule 27 C.P.C.

(c) The Courts below failed to appreciate the observations made in AIR 1964 Supreme Court P. 529. When the Will is dated 7-8-86, the witness was examined in the year 1992 and slight discrepancies are bound to occur and a registered Will dated 22-8-86 cannot be falsified if a witness has stated that it was registered on 7-8-1986.

(d) The Courts below failed to note the Will in question was presented by the testator herself. (Section 41 of the Registration Act).

(e) The Courts below ignored the weight of preponderating circumstances and as such this Court can interfere with concurrent findings of fact. AIR 1980 S.C. 1754.

(f) The courts below failed to note the plaintiff/appellant examined PW-2 who is an attester to the Will. PW-3 & 4 have identified the executant of the Will. The Courts below disbelieved the witness while so much of evidence has been adduced by the appellant/plaintiff. The defendant/respondent No.2 examined herself as DW-1 alone and failed absolutely to prove her claim and, thus, the Courts below ought to have held that the circumstances favour the plaintiff/appellant herein on the basis of weight of evidence. The misconstruction of evidence and acting without evidence are substantial question of law. AIR 1978 Mad. 42.

(g) The Courts below proceeded on wrong conception of law in lieu of statutory provision made under Section 27 of Registration Act. 1991 3 SCC P.33.

(h) The Courts below are influenced by inconsequential matters and there is defect in procedure by making wrong approach and substantial errors or procedure are crept in the judgments of the Courts below which itself is substantial question of law 1990 S.C. P.723.”

14. Heard Mrs. A. Bala Bharathi, learned counsel for the appellant. Though, respondents entered their appearance, there has been no representation on their behalf despite affording more than a dozen chances to tender arguments.

15. Only point that arises for consideration in the instant appeal is:

Whether there is any substantial question of law for adjudication; and

Whether the questions of law formulated in the grounds of appeal would constitute substantial questions of law warranting interference with the judgment and decree passed by the learned appellate Court?

16. The questions of law, referred to in clauses (a) to (h), in fact, deal with only factual aspect, but not legal aspect, mainly touching the findings tendered by the learned appellate Court on the Will propounded by the plaintiff. In fact, nothing is forthcoming in the grounds of appeal or in the submissions made by the learned counsel for the appellant in the direction of pointing out that the findings recorded by the learned appellate Court are tainted with illegality or utterly perverse. It needs no emphasis to reiterate, that unless the findings recorded by the Courts below are utterly perverse, resort to appreciation of evidence by the Courts below is absolutely unnecessary.

17. Admittedly, the appellant herein challenged the concurrent judgments rendered by both the Courts below and, therefore, it has to be held that no interference on factual side is needed. Even going to extreme, the findings recorded by the appellate Court on Will, it is to be held that the finding is well-reasoned based on process of appreciation of evidence in accordance with the evidentiary rule, which would be adverted to a little later. Suffice to observe, at this stage, that the suspicious circumstances surrounding the Will - Ex.A-1, propounded by the plaintiff, which the plaintiff could not dispel, have been pointed out by the appellate Court. Instead of once again reiterating the suspicious circumstances found by the appellate Court, it would suffice, if paragraph Nos.20 to 23 are extracted, which are thus:

“ 20. Ex.A.1 is the Will alleged to have been executed by Ramanujamma in favour of the plaintiff on account of love and affection and in the said Will, it is mentioned that he is the son of Sivaraj. The said Will was dt.7-8-1986, but the said document was registered on 21-8-86. P.W.2 and one Venkataswamy are the attestors of the said Will and P.W.3 and 4 are the identifying witnesses of the said Will. The said Will was presented on 21-8-86 in the office of Registrar, Azampura to register the said document. Bhagya Reddy and Venkataswamy attested the document Ex.A.1 as witnesses in the presence of Ramanujamma on 7-8-86 at her request as per the contents of the said documents. P.Ws.3 and 4 Sirajuddin Ali is a licenced document writer of Azampura and Yadamma, the wife of the plaintiff were the identifying witnesses at the time of registration of the said document on 21-8-1986.

21. In this case, the plaintiff is claiming that he is the beneficiary under the said Will and the property is bequeathed in his name. He being the profounder of the Will, a heavy duty is cast upon him to prove and establish his right over the said property. P.Ws.1 and 2 have categorically stated that Ex.A.1 was executed by late Ramanujamma in the Sub.Registrar office in the presence of Sub-Registrar. P.W.2 is the witness to the document. He has not stated anything that the contents of the document were read over and explained to her in her own language before obtaining her thumb impressions. It is also not stated by P.W.2 that he witnessed the putting of thumb impressions by late Ramanujamma and the said Ramanujamma witnessed his attestation and the attestation of Venkataswamy. On the other hand, P.W.2 categorically admitted that at the time of drafting the Will deed, he was not present. The signatures were put in the Registrar office and they signed as witnesses in the presence of Registrar; and that he did not see Yadamma and S.M. Jaffrey signing Ex.A.1. The thumb impressions of Ramanujamma on the Will deed were taken at two places. But Ex.A.1 shows, that the thumb impressions of the late Ramanujamma were taken at 3 places and they were also marked Exs.A.1 (a), (b) and (c). Apart from this, the plaintiff stated, that the draft was scribed by his counsel G.G. Naik on a plain paper. He took the said Will draft from his counsel and went to late Ramanujamma's house bearing No.16-4-491 and explained her the contents of the same and she kept the said draft with her and she informed him that the same should be registered within a week. So, it is evident that the said Ramanujamma did not affix her thumb impressions at the time when it was given to her. He stated that he took her and got it registered. There is no material that the said draft was fair copied by the scribe Sirajuddin Ali. The said Sirajuddin Ali was not examined before the

court. It is pertinent to note that the said document was in English and late Ramanujamma was an illiterate and thumb impressionist. It must be placed before the court that the said document was explained to her in the presence of the witnesses and after understanding the contents, she affixed her thumb marks. That type of material is not placed before the court.

22. P.W.2 a colleague of the plaintiff is the attesor of the said document, who is also residing in the same locality, and stated that he went to the Registrar's office at the instance of Ramanujamma where he signed as an attesting witness No.1 and he identified his signature as Ex.A.1(d) in the will Ex.A.1. As per his version, he attested the document on 21-8-86 but the document Ex.A.1 shows that it was attested on 7-8-86. When that is the state of affairs, what prevented him by identifying Ramanujamma before Registrar having stated that he went to the Registrar office on the request of Ramanujamma. Moreover, he stated that he did not see either S.M. Jaffrey (P.W.3) or Yadamma (P.W.4) at the registrar office. P.W.3, S.M.Jaffrey identifying witness stated that he was called by P.W.1 and the signatures on Exs.A.1(a), (b) and (c) were not taken in his presence and he does not know the scribe of Ex.A.1 and he cannot even identify other witnesses. P.W.4, Yadamma is the wife of P.W.1, admitted that she cannot say the name of the advocate who scribed it and she does not know whose handwriting is Ex.A.1(a) and the ink pad of registrar was used for obtaining the thumb impressions. He does not know Sirajuddin Ali. At the time of registration, Bhagya Reddy and Venkataswamy were present and they have also attested Ex.A.1 before registrar.

23. The evidence of P.W.2 excludes the presence of Yadamma, whereas P.W.4 admits the presence of P.W.2. The very drafting of the Will deed itself is also one of the suspicious circumstances as nobody has stated that the said draft was fair copied by Sirajuddin Ali. In fact, the thumb impression Ex.A.1(a), (b) and (c) were taken with Registrar's ink pad and the thumb impressions were taken before the Registrar and with black ink. The witnesses stated that these thumb impressions were taken at the Registrar office with the ink pad of the Registrar and they were black in colour. This is quite contrary to the very document. There is no recital at the end that the contents of the said document were read over and explained to her.

23. The other important circumstances placed before the court are that the document was drafted on 7-8-86 before the Sub-Registrar, why it was not registered on the same day. When the document was scribed on 21-8-86 on the date of registration why the date was put as 7-8-86, was not explained by the plaintiff before the court. It is for the plaintiff to dispel the suspicious circumstances in executing the said Will, if there are shrouded suspicious circumstances. Here in this case, the defendants are taking the plea of forgery. So, it is for the plaintiff, to dispel every suspicious circumstances while proving the document Ex.A.1."

Even, an intrinsic examination of the evidence on record would lead to that no other view is possible from the view taken by the appellate Court on Ex.A-1. Even on the probability sought to be derived that the registration of Will affirms its authenticity, certainly, the finding recorded by the appellate Court that mere registration of a Will itself

would not be sufficient to prove due execution of the Will, cannot at all be faulted.

18. In fact, the appellate Court has examined the Will and pointed out that there was insertion of two sentences in the said Will in the hand-writing and the evidence let in by the plaintiff would prove that the hand-writing was that of the Registrar. The two sentences that were inserted are

“This Will Deed is coming to effect after my death and I reserve my right to cancel and revoke during my life time.”

Except this inserted portion, the rest of the contents are typed. In that context, the non-examination of the document-writer would become material, besides the question as to why the Registrar was so interested in making such an endorsement. Thus, the appellate Court observes that it creates every doubt over the very execution of the document. So, thus, on appreciation of evidence also, there is absolutely nothing to show that there has been deviation made by the appellate Court touching the execution of the Will. It is no doubt true, execution of a document and its registration need not be contemporaneous, but that does not mean that the interregnum between the two can be beyond a reasonable period. When a document is executed, there was no necessity for the executant to withhold it without getting it registered within reasonable time. That has been the comment made by the appellate Court pointing out that nothing was forthcoming from the side of the plaintiff to explain away

why 13 to 14 days delay occurred in getting it registered. In fact, the documentary evidence shows that the Will was executed on 07-08-1986, but it was registered only on 21-08-1986. Therefore, the questions of law projected in clauses (a) of paragraph No.3 though, cannot be construed strictly as question of law, still, there is no merit in it. Incidentally, other questions formulated through clauses (b) to (h) also stand on the same footing.

19. Thus, viewed from any angle, it cannot be said that the judgment and decree passed by the appellate Court under challenge in the instant second appeal suffers from any legal infirmity warranting interference as neither there is any substantial question of law, nor even on factual side there is any merit to withhold the judgment and decree under challenge.

20. Hence, the second appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any pending in the second appeal, stand closed.

A. SHANKAR NARAYANA, J

September 28, 2016.
Mgr