

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

S.A.No.763 of 2016

JUDGMENT:

This Second Appeal is preferred against the judgment and decree dt.01.08.2016 in Appeal Suit No.9 of 2016 on the file of the Senior Civil Judge, Tadepalligudem confirming the judgment and decree dt.30.12.2015 in Original Suit No.298 of 2006 of the II Additional Junior Civil Judge, Tadepalligudem.

2. The appellants herein are defendants in the above suit.
3. One Cheppula Surayya/1st plaintiff filed the said suit for declaration of title and for delivery of vacant possession of the suit schedule property, which is an extent of 3 cents in RS.No.131/2 situated at Harijanapeta of Bhuvanapalli Village, West Godavari District within the specified boundaries. He died pending suit and his wife and daughter were impleaded as plaintiffs 2 and 3 on 13.09.2011 in I.A.No.1615 of 2011.
4. The deceased-1st plaintiff, who was originally a landless poor person, was assigned the subject land by the Tahsildar, Tadepalligudem under a patta on 18.08.1979 (Ex.A3). He constructed a Manglore tiled house in it after obtaining loan from the A.P. Housing Finance Corporation authorities. The said house was allotted Door No.1-146 by the Panchayat and since 1990 he was paying property tax.

5. It is contended by respondents/plaintiffs that in January 2001, the deceased-1st plaintiff fell ill and he shifted his residence from the plaint schedule property to the main centre for the purpose of taking daily medical treatment as the property was located in Harijanapeta at the outskirts of Bhuvanapalli village.

6. Respondents contended that 1st plaintiff allowed the appellants to reside in the plaint schedule property on condition that they should vacate the same as and when he required it and they should maintain it in good condition. They contend that when the deceased-1st plaintiff demanded the appellants to vacate the property by issuing a legal notice on Ex.A1 dt.27.10.2006, they did not vacate the property. Therefore, he filed the suit.

7. Appellants/Defendants denied the averments in the plaint and contended that they were landless poor people and had purchased the plaint schedule property from the deceased-1st plaintiff under an unregistered sale deed and that they were in possession and enjoyment of the same.

8. The trial court framed the following three issues:

- a) *Whether plaintiffs are entitled for declaration as prayed for?*
- b) *Whether plaintiffs are entitled for recovery of possession as prayed for?*
- c) *To what relief?*

9. Respondents examined PWs.1 to 4 and marked Exs.A1 to A3. Appellants examined Dws.1 and 2 and marked Exs.B1 and B2.

10. The trial Court decreed the suit by judgment and decree dt.30.12.2015. It held that the respondents, by examining PW1, Assistant

Engineer of A.P. State Housing Corporation and marking Ex.A3 patta, proved that there was assignment of the plaint schedule property in favour of the deceased-1st plaintiff. It held that the appellants' claim that they purchased the plaint schedule property for a consideration of Rs.16,000/- under an unregistered sale deed is not proved because the said document has not been marked in evidence. It held that they also did not lead evidence to show that the revenue officials issued notice to the deceased-1st plaintiff or his legal heirs for cancellation of patta for alienating the assigned property, under Section 3 of the A.P. Assigned lands (Prohibition of Transfer) Act, 1977 and therefore, the respondents have proved both title and their right to recover the property.

11. Challenging the same, A.S.No.9 of 2016 was filed by the appellants before the Senior Civil Judge, Tadepalligudem.

12. The lower Appellate Court dismissed the said appeal. It held that the appellants/defendants, having claimed that they had purchased the plaint schedule property under an unregistered sale deed from the 1st plaintiff, have not filed the same. It noted that Exs.B1, a certificate dt.17.10.2012 issued by the Panchayat Secretary, Bhuvanapalli and Ex. B2, which are four house tax receipts show a different door number from the plaint schedule property, which was Door No.1-146. It held that payment of house tax, even if it is with regard to the plaint schedule property, would not confer any title on the appellants. It also held that the claim of the appellants that the suit is barred by limitation is not established, since the suit was filed in 2006, after issuance of Ex.A1 legal notice, but the appellants did not reply to the same denying the title of respondents and only after filing of the suit, by filing

written statement on 10.10.2006, they raised such a plea. It held that limitation starts only from the date of filing of the written statement.

13. Challenging the same, this Second Appeal is filed.

14. Heard Sri T.Durga Prasada Rao, counsel for appellants.

15. The main contention of Counsel for appellants was that the appellants/defendants attempted to file a sale deed dt.19.08.1998 in the trial court when the suit was pending, but it was sent for impounding for the purpose of collection of stamp duty and penalty, and though the trial Court had addressed the District Registrar, District Registrar Office, Bhimavaram on 10.03.2005 for return of the said document after taking steps to impound the same by collecting stamp duty and penalty, the said document was not returned.

16. It is not disputed that on 12.08.2005 the District Registrar, Bhimavaram had addressed the trial Court stating that he had issued notices to the parties about the document in question, but the parties have not turned up and the document was not impounded due to the absence of parties and therefore it could not be submitted to the Court. Having failed to appear before the District Registrar and pay the deficit stamp duty and penalty, the appellants cannot blame the Courts below for deciding the suit and the first appeal without considering the said document.

17. Be that as it may, it is settled law that transfer of title would occur only if there is a registered document, such as a registered sale deed or gift deed or exchange deed. There cannot be any transfer of title under an

unregistered sale deed set up by the appellants. Therefore, even if such document were to be marked on behalf of the appellants in the trial Court, it would not have made any difference to the result of the suit.

18. Also merely because the suit schedule property is assigned land, the jurisdiction of the Civil Court to decide the dispute in question between the appellants and the respondents/plaintiffs is not take away, since the dispute is not between the Revenue department of the State Government and respondents, but between the respondents and the appellants/plaintiffs, who were allowed to be in permissive possession of the plaint schedule property.

19. Therefore, I do not find any substantial question of law arising for consideration in this Second Appeal, and it is accordingly dismissed. There shall be no order as to costs.

20. Consequently, miscellaneous applications, pending if any, in this Second Appeal, shall stand closed.

M.S.RAMACHANDRA RAO, J

Date : 14.10.2016
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