

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

SECOND APPEAL No.510 of 2016

JUDGMENT:

This Second Appeal is filed challenging the judgment and decree dt.25.04.2016 in A.S.No.3 of 2012 on the file of IV Additional District Judge, Tanuku confirming the judgment and decree dt.17.12.2011 in O.S.No.417 of 2005 on the file of Principal Junior Civil Judge, Tanuku, West Godavari District.

2. The appellants in the Second Appeal are defendants in the suit.
3. The respondent/plaintiff filed the suit for recovery of possession of the plaint schedule property after evicting the defendants therefrom, for future profits till date of delivery, and costs.
4. The mother of the respondent is one Smt. Adamma. The 2nd appellant is the daughter of respondent. The 1st appellant is the husband of 2nd appellant.
5. Initially, the plaint schedule property was purchased by Smt. Adamma under a registered sale deed Ex.A.1 dt.04.05.1949 from one Pasupulati Pullayya and others. On 16.03.1995, Smt. Adamma executed a Ex.A4 registered Settlement Deed in favour of respondent in respect of the plaint schedule property reserving right of enjoyment

to the usufruct and giving a vested remainder to the respondent with absolute rights.

6. Smt. Adamma died on 16.06.2005.

7. The 1st appellant was in possession of the property, and the respondent demanded him to deliver possession of the property.

8. According to respondent, the appellants promised to deliver possession of the property, but thereafter, the 2nd appellant filed O.S.No.374 of 2005 against the respondent for permanent injunction taking a plea that late Smt. Adamma executed a Settlement Deed in her favour on 07.08.1995 (Ex.B.1). The respondent therefore contended that Smt. Adamma could not convey any right to 2nd appellant beyond her life interest and she had no right to execute another Settlement Deed in favour of 2nd appellant.

9. The 2nd appellant filed written statement which was adopted by 1st appellant. They contended that Ex.A.4 Settlement Deed dt.16.03.1995 was obtained by respondent from Smt. Adamma by playing fraud and undue influence taking advantage of the innocence of Smt. Adamma; on coming to know of the same Smt. Adamma executed a registered Cancellation Deed Ex.B.2 on 05.08.1995; and thereafter, Smt. Adamma executed Ex.B.1 registered Gift Settlement Deed on 07.08.1995 in favour of 2nd appellant absolutely and delivered the original Settlement Deed and also property covered therein. They contended that the respondent was aware of the

execution of Ex.B.2-Cancellation Deed and also Ex.B.1 registered Gift Settlement Deed, that the respondent and 2nd appellant availed loan of Rs.75,000/- on 09.09.1998 by depositing the original Settlement Deed and the respondent also benefitted from the money borrowed and the loan was discharged on 10.12.2000. They contended that the 2nd appellant had been in possession and enjoyment of the property with full rights by paying land revenue which was also known to respondent and that Ex.B.1 Gift Settlement Deed in favour of 2nd appellant was thus acted upon. It was also contended that the 2nd appellant obtained loan from Primary Agricultural Co-operative Society, Muddapuram, and the respondent cannot therefore seek for recovery of possession of the property.

10. On the basis of these pleadings, the Trial Court framed the following issues :

- “1. Whether the plaintiff is entitled for the relief of possession of the plaint schedule property as prayed for ?
2. Whether the plaintiff is entitled for future profits ?
3. To what relief ?”

11. Before the Trial Court, the respondent examined PWs.1 to 4 and marked Exs.A.1 to A.4. The appellants examined DWs.1 to 5 and marked Ex.B.1 to B.5. The certified copy of the registered Gift Settlement Deed dt.07.08.1995 executed by Smt. Adamma in favour of 2nd appellant was marked as Ex.C.1 by the Court.

12. By judgment and decree dt.17.12.2011, a preliminary decree was passed by the Trial Court directing the appellants to deliver possession of the plaint schedule property within three (03) months and also to pay *mesne* profits from the date of death of Smt. Adamma till the date of delivery of possession.

13. The Trial Court held that the plea of appellants that the suit is barred by limitation cannot be accepted because the right to sue accrued to respondent only on the death of Smt. Adamma on 16.06.2005, and the suit was filed by respondent on 26.07.2005 well within time. It held that Ex.A.4 registered Settlement Deed executed by Smt. Adamma in favour of plaintiff could not have been unilaterally cancelled by Smt. Adamma by executing Ex.B.2 registered Cancellation Deed dt.05.08.1995. It therefore held that Ex.B.2 is not valid and therefore the 2nd appellant is not entitled to make any claim under Ex.B.1 dt.07.08.1995 executed in her favour by Smt. Adamma. It also rejected the plea of appellants that the execution of Ex.A.4 registered Settlement Deed on dt.16.03.1995 by Smt. Adamma in favour of respondent was vitiated by fraud or undue influence. It noted that the 1st appellant claimed that two days after execution of the Ex.A.4, Smt. Adamma came to his house and informed that the respondent had obtained document from her and she had no source of livelihood and she would commit suicide by jumping into a well and this plea cannot be believed since Smt. Adamma had reserved the life interest for herself under Ex.A.4. It held that the

executant Smt. Adamma had survived for a period of ten years after execution of Ex.A.4 Gift Settlement Deed in favour of respondent and she had never taken steps to cancel the said document during her life time on the said ground through any competent court. It held that as per recitals in Ex.B.1, Smt. Adamma claimed to have executed Ex.A.4 only by mistake and had not mentioned about fraud or undue influence. It held that the respondent had accepted the Gift and agreed to receive the vested remainder after the life time of the donor, and after such acceptance, the Gift Deed cannot be revoked. It took note of the fact that O.S.No.374 of 2005 was dismissed subsequently and held that since the appellants did not dispute possession and enjoyment of respondent, they are also liable to pay *mesne* profits apart from delivering possession of the property to respondent.

14. Challenging the same, the appellants filed A.S.No.3 of 2012 before the IV Additional District Judge, Tanuku.

15. The said appeal was dismissed on 25.04.2016, confirming the judgment of the Trial Court. The lower appellate court re-considered the evidence on record and rejected the plea of appellants that the ingredients of Section 122 of the Transfer of Property Act, 1882 were not complied with in the transaction of Ex.A.4 on the ground that the evidence adduced by appellants did not show that Ex.A.4 Gift Settlement Deed was not accepted by respondent. It held that a Gift Deed cannot be cancelled unilaterally once it is accepted, and in the instant case the respondent had accepted the gift and agreed to receive

the vested remainder after the lifetime of the donor. Consequently, it held that Ex.B.2 Cancellation Deed is invalid and unenforceable in law and that Ex.A.4 would prevail over Ex.B.1. It also held that the witnesses produced by respondent did not speak about the alleged fraud and DW.4, who was examined as a witness by appellants and who claimed to be present at the time of cancellation of Ex.A.4 under Ex.B.2, did not give any reason why Smt. Adamma cancelled Ex.A.4.

16. Challenging the same, the present Second Appeal is filed.

17. The counsel for appellants firstly contended that the respondent was aware of the execution of Cancellation Deed Ex.B.2 on 05.08.1995 and also the execution of B.1 by Smt. Adamma during her lifetime, and therefore she ought to have questioned the same immediately. As rightly held by the Trial Court the right to sue accrued to respondent only on the death of Smt. Adamma which took place on 16.06.2005 and so she filed the suit on 26.07.2005. Therefore, the plea of bar of limitation cannot be accepted.

18. Also since the respondent was not a party to the Cancellation Deed, she is entitled to ignore the same in view of the fact that there cannot be unilateral cancellation of a Gift Deed which had been accepted. She is entitled to plead that it is null and void¹ and need not seek its cancellation specifically.

¹ Suhrid Singh v. Randhir singh ... AIR 2010 SC 2807; Nade Ali Mirza v. Khalida Mohammed Salim Dawawala ... 2016 (1) ALD 318

19. Also it was not the case of Adamma that she cancelled Ex.A.4 on the ground that it was not accepted by respondent. Therefore once it was accepted by respondent, unilaterally it cannot be cancelled².

20. It is not in dispute that Smt. Adamma survived for ten years after the execution of Ex.A.4 and she never took the plea of fraud, undue influence or coercion and made an attempt to get the Ex.A.4 Settlement Deed set aside by approaching any court during her lifetime. Also, the recital in Ex.B.1 is that Smt. Adamma executed Ex.A.4 by mistake, and not on the ground of fraud or undue influence or coercion. Therefore, the plea of fraud, undue influence and coercion was rightly held to have been not established by appellants by both the Courts below.

21. Therefore, I do not find any substantial question of law for consideration in this Second Appeal. Accordingly, the Second Appeal is dismissed at the stage of admission. No order as to costs.

22. As a sequel, miscellaneous applications pending if any, in this Second Appeal shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 23-11-2016

Ndr/*

² See K. Balakrishnan v. K.Kamalam... (2004) 1 SCC 581