

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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SECOND APPEAL No.778 of 2015
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JUDGMENT:

This Second Appeal, preferred by the plaintiffs, arises out of the concurrent findings of fact recorded by the Courts below.

The plaintiffs filed O.S. No.22/2009 on the file of the learned Senior Civil Judge, Nagarkurnool, seeking declaration of title and recovery of possession in respect of the lands in Survey Nos.302 and 304 situated in Pullagiri Village, Thimmajipet Mandal, Mahabubnagar District. The case of the plaintiffs is that plaintiff No.1 is the mother of plaintiff No.2. One B.Balaiah, who was the grandfather of husband of plaintiff No.1, was the original owner of the property and it was succeeded by the husband of plaintiff No.1. After the death of husband of plaintiff No.1, since plaintiff No.1 could not cultivate the suit lands personally, she left the village and came back to her village in the month of May 2000. She came to know that the defendants got mutated their names in the revenue records in the year 2000 and asked them to vacate the land on 15.03.2003 and 20.11.2008 and when they did not vacate the land, she filed the suit in the year 2009.

The defendants 6 to 8 filed a written statement stating that though Balaiah was the original owner, he got one son by name Kashanna. Kashanna's son by name Balaswamy is the husband of plaintiff No.1. Apart from Balaswamy, Kashanna has two daughters by name Bamma and Gunamma. The father of defendants 6 to 8 married Bamma and Gunamma. Defendant No.6 is the son of Bamma and defendants 7 and 8 are the sons of Gunamma. Late Kashanna has divided the suit schedule lands into two equal shares and gave one share to his son by name Balaswamy and another share to his son-in-law by name Chandraiah, father of defendants 6 to 8. The said Kashanna and Chandraiah never sold the suit lands to

any person, particularly, defendants 1 to 5 and defendants 8 to 22. When defendants 6 to 8 came to know about the entries in favour of defendants 1 to 5 and defendants 8 to 22, they filed an objection petition before the revenue authorities. In view of the disputes between the plaintiffs and defendants 6 to 8, the suit was filed.

A separate written statement was filed by defendant No.20 stating that Balaswamy and his mother Laxmamma sold out the entire suit schedule lands to defendants 1 to 4 under the registered sale deeds dated 24.12.1984, 03.12.1984, 21.02.1984 and 10.05.1983 and to defendant No.5 through a registered sale deed dated 22.12.1981 and one Bhanur Devaiah purchased the land under a registered sale deed dated 23.02.1983. Defendants 9 to 12 and the ancestors of defendants 13 to 16 purchased the land from the ancestors of defendants 17 to 21 and they are the true owners. Since the dates of their purchase, they have been in peaceful possession and enjoyment over the suit land. The trial Court framed the following issues:

- 1) Whether the plaintiffs are entitled for the declaration that they are owners of the suit lands?
- 2) Whether the plaintiffs are entitled for the delivery of possession of suit lands from the defendants?
- 3) To what relief?

Before the trial Court, PWs 1 and 2 were examined and exhibits A1 to A8 were marked. On behalf of the defendants, DW1 was examined and exhibits B1 to B15 were marked. The trial Court accordingly gave a finding holding that the plaintiffs cannot be declared as owners of the suit schedule lands. The suit was thus dismissed by judgment and decree dated 30.01.2012. Challenging the same, the plaintiffs preferred an appeal in A.S. No.19/2013 before the Court of the learned IX Additional District Judge, Wanaparthy, who framed the following points for consideration:

- “1) Whether the schedule lands are sold away by

Balaswamy the husband of first plaintiff and his mother Laxmamma during their life time?

2) Whether the plaintiffs could prove their possession and enjoyment of the schedule land within 12 years before institution of the suit?

3) Whether the defendants were inducted into possession of the schedule land to cultivate it on crop share basis?

4) Whether the findings of the lower court in the judgment and decree under Appeal needs an interference?

5) To what relief?"

The appellate Court held that admittedly on the date of institution of the suit the defendants were in possession of the suit schedule lands and the plaintiffs miserably failed to discharge the burden on them to prove their case with regard to the title to the land. Ultimately, it dismissed the suit with costs throughout by holding as follows:

"Now coming to the aspect of proof of the original registered sale deeds in Exs.B.1 to B.8 in the cross examination execution of these Sale Deeds by his father Balaswamy and his mother Laxmamma has not denied and no suggestion was given that they were not executed by Balaswamy and his mother Laxmamma and that they are forged and fabricated documents. Since these Sale Deeds are registered documents and the object of the Registration Act, 1908 is for registering any document is to give notice of it to world to inform that such a document has been executed. Hence the plaintiff cannot plead that they have no knowledge of these Exs.B.1 to B.8 registered documents. The purpose of registration of Sale Deed is to prevent forgery and to have secure a reliable transaction effecting the rights over immoveable property and it is intended to create legal right to the party who obtained registered sale deed and obligation on the person who executed it. One of the argument sought to be advanced by the learned counsel for the appellant is the person who attested these sale deeds has not been alive to prove the recitals of the document. In the absence of such evidence these documents cannot be said as proved. It is pertinent to bear in mind that U/S. 68 of Indian Evidence Act only the Will Deed required to be proved by examining the attester but not the registered sale deed. Infact the registered sale deed is not compulsorily required to be attested by an

independent person. As such this argument of learned counsel for the appellants holds no water.

16. Once the execution of Exs.B.1 to B.8 are accepted as true and genuine neither the plaintiffs nor D.5 to D.8 have any case because these sale deeds in Exs.B.1 to B.8 were executed during the years 1981 to 1984 i.e. more than 24 years prior to the institution of suit. On the strength of these Exs.B.1 to B.8 registered sale deeds the properties are mutated in the names of vendees of as evidenced by Exs.B.9 to B.15 which reflects the possession of the defendants and purchaser. Since Exs.B.9 to B.15 are revenue records, the entries there in are presumed to be true under A.P. Rights in Land and Pattadar Pass Books Rules, 1989. Since Exs.B.9 to B.15 proved the possession of the defendants and their purchaser in title to the suit land from Exs.B.1 to B.8 Sale Deeds it is to follow that neither the plaintiffs nor D.6 to D.8 were in possession of the schedule land within 12 years from the date of institution of present suit. As a result the plaintiffs and D.6 to D.8 have lost any right and title if any by efflux of time and the suit is hopelessly barred by limitation. Accordingly the point is answered.”

In view of the above concurrent findings of fact, as the plaintiffs miserably failed to prove their case with regard to the title to the land sought to be recovered, I see no ground to interfere with the findings of fact recorded by both the Courts below on the basis of the evidence adduced.

Accordingly, this Second Appeal is dismissed at the admission stage. No order as to costs. Miscellaneous Petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

18.01.2016

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