

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

SECOND APPEAL NO.220 of 2016

JUDGMENT:

1. Aggrieved by the concurrent judgments and decrees of eviction passed against them, a mother – son/duo have come up with the present second appeal.
2. Heard Mr. Y. Ramatirtha, learned counsel for the appellants and Mr. P.S. Raja Sekhar, learned counsel for the respondent.
3. The respondent herein filed the suit in O.S.No.577 of 2012 on the file of the III Additional Junior Civil Judge at Vijayawada, for eviction, recovery of arrears of rent and for future damages against the appellants herein. The suit was decreed on 08.05.2014 directing the appellants herein to vacate and deliver vacant possession of the suit schedule property and also directing the appellants to pay arrears of rent at the rate of Rs.5000/- per month from 01.02.2012 to 30.06.2012 and also for damages for unauthorized use and occupation of the plaint schedule property on the same rate from 01.07.2012 onwards.
4. The said judgment and decree of the trial Court was taken on appeal in A.S.No.127 of 2014 before the II Additional District Judge, Vijayawada by the appellants. But by a judgment and decree dated 8.02.2016 the lower appellate Court confirmed the judgment and decree of the trial Court. Hence the present second appeal.
5. The respondent claimed title to the suit schedule property, on the basis of a registered sale deed dated 21.01.2012. This sale deed was marked as Ex.A.5 before the trial Court. The vendor of the respondent/plaintiff, derived title to the property under Ex.A.4, dated 29.07.2010. The person, who executed Ex.A.4, had acquired the property, under Ex.A.3 dated 15.04.2009, which was an agreement of possessory sale-cum-General Power of Attorney.
6. There is no dispute about the fact that this Ex.A.3 dated 15.04.2009 bare the signatures of the present appellants herein.

Though a weak defence was raised before the trial Court that without knowing the purport of contents of Ex.A.3, the appellants became parties to the same, the trial Court rejected such a defence rightly so. Therefore, the fact remains that the respondent/plaintiff has acquired title on the basis of a document titled as agreement for possessory sale cum General Power of Attorney executed by the appellants themselves.

7. Yet another defence sought to be raised by the appellants herein was that the first appellant's daughters (the sisters of the 2nd appellant) also had a share in the property and that therefore Ex.A.3 did not convey title to the suit schedule property in entirety in favour of the respondent/plaintiff. To this effect, reliance is also placed upon the provisions of Section 44 of the Transfer of Property Act, 1882.

8. But a look at the recitals contained in Ex.A.3 dated 15.04.2009 show that the appellants claimed to be the absolute owners of the suit schedule property. The relevant portion of the recitals contained in Ex.A.3 is extracted as follows:-

“As we are the whole and sole legal heirs who are 1st is the Wife and 2nd is the son to Late Varada Venkateswarulu and after his death we taken the possession of the property and enjoying the same with absolute rights. As we needed some amount for our family needs we pledged the property to ANDHRA BANK, SAMARANGAM CHOWK, VIJAYAWADA-I TOWN Branch and had kept the schedule property as a mortgage after handovering the original documents to them and obtained some amount as a loan from them.”

9. More over, one of the sisters of the 2nd appellant appears to have filed a suit in O.S.No.264 of 2012 for a partition, but without cooperating with the appellants herein, the sister appears to have allowed the suit to be dismissed for non-prosecution. Therefore, even the sole surviving defence that was a part of the written statement, got erased out. Hence no question of law, much less a substantial question of law arises in this second appeal.

10. Therefore, the Second Appeal is dismissed. There shall be no order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE V. RAMASUBRAMANIAN

15th July, 2016
Js.