

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

S.A.No.943 OF 2009

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JUDGMENT :

This second appeal under Section 100 of the Code of Civil Procedure is filed by the unsuccessful plaintiffs before the appellate Court having succeeded before the trial Court.

2. The plaintiffs/appellants filed suit for declaration of title and recovery of possession of schedule property based on the relinquishment deed dated 25.02.1951 allegedly executed by Vemuri Vishwanadha Sarma, who formed an unregistered adhoc committee having purchased Ac.87.31 ½ cents in various survey numbers of Podili, divided the land into plots and allotted Plot No.83, 84, 91 and 92 allegedly to the grand-father of the plaintiffs and it is also contended that his grand-father executed a Will, dated 03.09.1976-Ex.A.2 bequeathing the schedule property in his favour under original of Ex.A.2-Will.

3. During life time of Vemuri Vishwanadha Sarma, he executed relinquishment deed dated 25.02.1951-Ex.A.1 in favour of Podili Rural Co-operative Housing Society with a direction to execute registered sale deeds in favour of the persons, whose names are shown in the schedule annexed to the relinquishment deed. Therefore, as legatees under the Will executed by grant-father of the plaintiffs under original of Ex.A.2, they claimed title to the property and recovery of possession granting relief of declaration of title to the property and consequential relief of possession.

4. The defendant denied the very execution of the relinquishment deed dated 25.02.1951-Ex.A.1 pleaded by the

plaintiffs besides raising several other contentions relating to identity of the property and existence of Podili Rural Cooperative Housing Society including execution of original of Ex.A.2-Will and prayed for dismissal of the suit.

5. Basing on the above pleadings, the trial Court framed the following issues:

- 1) *Whether the plaintiffs are entitled for declaration of title in the suit schedule property?*
- 2) *Whether the plaintiffs are entitled for mandatory injunction for removal of buildings in which the defendants are living?*
- 3) *Whether the plaintiffs are entitled for recovery of suit land?*
- 4) *Whether the suit is bad for non-joinder of necessary party i.e. defendants husband Bathula Malakondareddy?*
- 5) *Whether the relinquishment deed dated 25.02.1951 is invalid under law?*
- 6) *Whether the defendant has perfected her title by way of adverse possession?*
- 7) *Whether there is no cause of action for the suit?*
- 8) *To what relief?*

6. On behalf of the plaintiffs, PWs.1 to 8 were examined and marked Exs.A.1 to A.4. Commissioner was examined as CW.1 and Exs.C.1 to C.3 were marked. To substantiate the case of the defendants, DW.1 was examined and marked Exs.B.1 to B.20.

7. Upon hearing argument of both counsel, the trial Court granted relief in favour of the plaintiffs recording several findings more particularly proof of title by adverse possession at para 13 and also believing Ex.A.2-Will, by which the suit schedule property was bequeathed believing the evidence of PW.6, who is son of attestor of Ex.A.2-Will.

8. Aggrieved by the decree and judgment of the trial Court, defendants preferred A.S.No.3 of 2004 before the Senior Civil

Judge, Darsi by judgment dated 30.05.2009 allowed the appeal and set aside the decree and judgment passed by the trial Court and dismissed the suit in toto.

9. Aggrieved by the judgment of the first appellate Court, the present appeal is filed by raising several contentions. At the stage of admission, heard learned counsel for the appellants at length, who supported the trial Court judgment in all respects.

10. A perusal of the judgment of the trial Court, it is clear that Vemuri Vishwanadha Sarma allegedly purchased Ac.87.38 ½ cents in different survey numbers and allotted schedule property to the grand-father of the plaintiffs, but no proof is brought on record to substantiate the allotment of the schedule property to grand-father of the plaintiffs. However, the trial Court accepted the relinquishment deed executed in favour of the Podili Rural Co-operative Housing Society by Vemuri Vishwanadha Sarma directing the society to execute registered sale deeds in favour of the persons, whose names are shown in the schedule annexed to the relinquishment deed.

11. No title deed of Vemuri Vishwanadha Sarma evidencing purchase of Ac.87.38 ½ cents was produced before the trial Court and no details of property purchased in different survey numbers with boundaries were brought on record, but the trial Court accepted the relinquishment deed under the original of Ex.A.1. The relinquishment deed can be executed by the person in favour of another, who is having interest in the property, but the society has nothing to do with the property. Therefore, execution of deed relinquishing rights of Vemuri Vishwanadha Sarma in favour of the society is invalid. By virtue of the relinquishment deed, Podili

Rural Co-operative Society is not entitled to execute the registered sale deeds. Even if it is accepted as valid, when the plaintiffs are claiming title as legatees under the Will under the original of Ex.A.2, it is for them to produce the original before the Court. But curiously PW.6, son of one of the attestors was examined to prove execution of Will in terms of Section 68 of the Indian Evidence Act without producing the original Will. The Will produced before the trial Court is inadmissible as there is no factual foundation in the plaint about loss of the original Will or possession of the Will by any other person as required under Order 7 Rule 14(2) C.P.C. and in the absence of factual foundation to let in secondary evidence admission of Ex.A.2 in evidence is erroneous. That apart, even assuming for a moment that the original of Ex.A.2 is not available, nothing prevented the plaintiffs to summon the Wills Register, Book No.3 and thumb impression register maintained under the rules framed under the Registration Act to prove execution of the Will and to identify the thumb impression or signature of the attesor by PW.3. Merely because, one of the attesor is not available, nothing prevented the plaintiffs to prove due execution of the Will by adopting the procedure contemplated under Sections 69 and 70 of the Indian Evidence Act. For the reasons best known to the plaintiffs they did not follow the procedure prescribed under Sections 69 and 70 of the Indian Evidence Act to prove execution of Will by grand-father of the plaintiffs in their favour. Therefore, the Will cannot be said to be proved and on the strength of such Will the right of the plaintiffs cannot be declared since no document was executed either by Vemuri Vishwanadha Sarma or by Podili Rural Co-operative Housing Society in favour of grand-father of plaintiffs conveying the property. On this ground, the judgment of the trial Court is erroneous.

12. Curiously, at the end of para 13, the trial Court recorded a finding that grand-father of the plaintiffs perfected title by adverse possession since he was in long continuous possession. But the trial Court ignored the importance of the pleadings and evidence in support of such pleading to constitute the possession as adverse possession and such finding is unwarranted in the absence of any plea and evidence in support thereof. Therefore, the decree passed by the trial Court basing on Exs.A.1 and A.2 without insisting production of the title of Vemuri Vishwanadha Sarma and details of the property purchased by him under various registered sale deeds, the decree cannot be sustained.

13. As, first appellate Court recorded its own reason and dismissed the suit allowing the appeal, this Court find no substantial question of law to be decided by exercising power under Section 100 of the Code of Civil Procedure since the evidence on record is not sufficient to declare the title of the plaintiffs. That apart based on adverse possession title of the plaintiffs cannot be declared as held by the Supreme Court in **Gurudwara Sahib vs. Gram Panchayat Village Sirthala and Anr.**^[1]. In view of the principle laid down by the Apex Court, the title of the plaintiffs cannot be declared and possession cannot be ordered to be recovered.

14. In view of my foregoing reasons, I find no substantial question of law in this appeal and hence, the appeal is dismissed at the admission stage.

As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

29.08.2016
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M.SATYANARAYANA MURTHY,J

HON’BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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DATED: 29.08.2016

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[\[1\]](#) (2014) 1 SCC 669