

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

S.A.No.351 of 2016

JUDGMENT:

This Second Appeal is preferred against the judgment and decree dt.18.01.2016 in Appeal Suit No.355 of 2011 on the file of the IX Additional District Judge, Kovvur confirming the judgment and decree dt.15.06.2009 in Original Suit No.63 of 2008 of the Junior Civil Judge, Nidadavole.

2. The appellant herein is the plaintiff in the above suit.

3. The said suit was filed by the appellant to declare that he is absolute owner of the plaint schedule property and that a Settlement Deed dt.21.08.2002 executed by the 2nd respondent herein in favour of the 1st respondent is null and void, arbitrary and unenforceable in law. He also sought perpetual injunction restraining the respondents from interfering with the alleged possession and enjoyment of the appellant of the plaint schedule property described in the plaint plan as located between 'BEJC'.

4. The appellant contended that this parcel of land was purchased by his paternal aunt Chandamma under Ex.A1 registered sale deed dt.22.09.1950 and that after purchase, she erected a small thatched hut in the property. He contended that the site adjacent to the said property was purchased by his father on the same date under another registered sale deed (Ex.A3) and that it is described in the plaint plan as 'ABCD1'. He contended that his father purchased 'FGHI' site to the east of the plaint schedule property under Ex.A2 sale deed dt.11.05.1952, that his father died when he was aged about 4 years, and he was brought up by his mother. He contended that he built a

terraced building in the site purchased by his father shown as 'PQRS'. He contended that his father performed marriage of Chandamma, but two years after her marriage, her husband died, and she started living in plaint schedule property by erecting a small thatched hut therein. He claimed that he was looking after the affairs of Chandamma till her death on 23.10.1992. He alleged that she executed Ex.A4 Will dt.04.02.1990 bequeathing the plaint schedule property to him and handed over the original sale deed under which she purchased the property also to him. He contended that the 2nd respondent, who is also his paternal aunt, and the 1st respondent, who is her grand daughter, do not have any right in the plaint schedule property, but they attempted to claim to the property under Ex.B1 Will dt.15.09.1992 and a settlement deed Ex.B2 dt.21.08.2002. The appellant alleged that the respondents attempted to forcibly trespass into the plaint schedule property and so he filed the suit.

5. The respondents denied the **plaint** averments and disputed the rough plan filed along with the plaint. They contended that the plaintiff never looked after the welfare of Chandamma at any point of time. According to them, Chandamma had no children and her husband predeceased her. They alleged that ever since then, Chandamma lived in the house of the 2nd respondent at Samisragudem Village and that only respondents 1 and 2 looked after her welfare. It is contended that the husband of the 2nd respondent performed the obsequies of Chandamma at the said village and plaintiff had not even attended the said funeral function. They contended that during her life time, Chandamma executed a Will dt.15.09.1992 (Ex.B1) bequeathing the property of an extent of 100 sq. yards including the

plaint schedule property in favour of the 2nd respondent and that Chandamma died on 23.10.1992 in the house of the 2nd respondent. It is further contended that the 2nd respondent enjoyed the plaint schedule property after the death of Chandamma and later executed a registered Settlement Deed dt.21.08.2002 (Ex.B2) in favour of the 1st respondent, who is her grand daughter, out of love and affection and delivered possession of the plaint schedule property to the 1st respondent on the date of execution of Ex.B2. They contended that the appellant has site to the East and West of the plaint schedule property of the 1st respondent and he requested the 2nd respondent to sell her property, which is adjacent to his property so that he can own them as a single plot, but the 2nd respondent refused to sell the same and expressed her intention to settle the property in favour of the 1st respondent. They alleged that the appellant then created Ex.A4 Will dt.04.02.1990. They contended that Chandamma never executed Ex.A4 Will and that they believed that the appellant had taken away Ex.A1 sale deed from the custody of the 2nd respondent. They therefore, prayed that the suit be dismissed.

6. The trial Court framed the following issues:

- a) *Whether the plaintiff is entitled for declaration that Ex.B2 settlement deed is null and void?*
- b) *Whether the plaintiff is entitled for consequential injunction against the defendants?*
- c) *To what relief?*

7. The appellant/plaintiff examined PWs.1 to 6 and marked Exs.A1 to A10. The respondents examined Dws.1 to 5 and marked Exs.B1 and B2.

An Advocate-Commissioner was also appointed and Ex.X1 which is his report and Ex.X2 rough sketch of the plan prepared by him.

8. By judgment and decree dt.15.06.2009 the trial Court dismissed the suit with costs.

9. It first considered the question whether Chandramma executed Ex.A4 Will dt.04.02.1990 or Ex.B1 Will dt.15.09.1992.

10. After considering the evidence of appellant's witnesses, it held that Chandramma was illiterate; that she could not have given any instructions to the scribe with regard to the purchase by her of the site under Ex.A1; the scribe admitted to have drafted Ex.A4 without perusal of any document and he did not have any prior acquaintance with Chandramma and could not have known any details such as the date and the document number of Ex.A1 under which Chandramma purchased the suit schedule property, but they were both written in Ex.A4 Will; and the attester of Ex.A4 was not present till completion of entire process of execution of Ex.A4. It also noticed certain over-writings in Ex.A4, particularly, with regard to the age of the testator. It held that though PW1 stated that he had obtained possession of the plaint schedule property from Chandramma by 1987, there is no document placed on record before the Court by the appellant to show that he was in possession of the property after 1987; the appellant had even admitted in cross-examination that he called PWs.2 and 3 to be the scribe and attester of Ex.A4 Will even though he had no prior acquaintance with them; appellant did not place any evidence to show that Ex.A4 Will was acted upon after the death of Chandramma; and therefore, the appellant had

failed to remove the suspicious circumstances surrounding execution of Ex.A4. It concluded that the appellant failed to prove his title over the plaint schedule property and therefore he is not entitled to seek either declaration of his title or perpetual injunction as sought by him.

11. Aggrieved thereby, the appellant filed, A.S.No.355 of 2011 before the IX Additional District Judge, Kovvur.

12. The said appeal was also dismissed by judgment and decree dt.18.01.2016. The lower appellate Court opined that if the appellant is able to establish the execution of Ex.A4 Will, then only it would consider whether Ex.B1 Will dt.15.09.1992, set up by the respondents, is true or not.

13. After reviewing the evidence on record it held that PW1 admitted in cross-examination that one week prior to the execution of Ex.A4 Will, Chandramma informed him that she intended to execute the Will and he called the attester and scribe of the said Will, although the testator did not mention any particular person or persons to be called as attester and scribe. It held that the appellant had taken an active role in execution of Ex.A4 Will since he was the one who brought the attester and scribe, and he being the beneficiary under the said Will, it is a suspicious circumstance to doubt the genuineness of the said Will. It noted that the appellant as PW1 deposed that both attestors put their signatures on Ex.A4 Will with a ballpoint pen but on perusal of the said Will, it is clear that the 1st attester, Telagareddy Adhinarayana, put his left thumb mark and had not signed it. It pointed out that while PW2, the attester stated that the scribe of Ex.A4, PW3 is a Village Munsif, PW3 stated that he is only a document writer, and there is no

evidence to show that whether he is a Village Munsif or not. It noted that the evidence of PW2 indicates that he was not present at the time of attesting the Will Ex.A4 by the 2nd attester and putting of signature by the scribe on it. It noted that PW3 admitted that the words 'LTM of Telagareddy Adhinarayana' found on Ex.A4 are not in his handwriting. Taking into account these inconsistencies, it held that the appellant failed to prove valid execution and genuineness of Ex.A4 Will and opined that its execution was surrounded by suspicious circumstances. Since the appellant failed to prove the execution of Ex.A4 Will, it held that he is not entitled to seek a declaration that the Settlement Deed Ex.B2 set up by the respondents is null and void and consequently, he is not entitled to the relief of perpetual injunction either.

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

15. Sri V.Sudhakar Reddy, Counsel for the appellant contended that the Courts below failed to appreciate the legal position with regard to the proof of Will provided under Section 63(c) of the Indian Succession Act, 1925. He contended that the evidence of attestors and scribe of Ex.A4 Will could have been accepted by the Courts below.

16. I have considered the judgments and decrees of both the trial Court as well as the lower Appellate Court.

17. The evidence on record clearly indicates that the appellant, who is the beneficiary under Ex.A4 Will, brought the attestors and scribe of the said Will. PW3, scribe, admitted that he had no prior acquaintance with the executant prior to the execution of Ex.A4 Will. Admittedly, the testator

was an illiterate person and so she could not have given the details of date and document number of Ex.A1. But Ex.A4 contains both these details though the evidence on record shows that no document was referred to at the time of drafting of Ex.A4 Will by PW3. Also PW2 admitted that the words in telugu “LTM of Telagareddy Adhinarayana” in Ex.A4 were not written by him and they have been incorporated by somebody else. Even the scribe admitted that there were some corrections and over writings in Ex.A4 Will.

18. In view of these inconsistencies and suspicious circumstances, I am of the opinion that the both the Courts below did not commit any error in law in coming to the conclusion that the appellant had not been able to prove the valid execution and genuineness of Ex.A4 Will.

19. Therefore, I do not find any substantial question of law arising for consideration in the Second Appeal warranting interference by this Court under Section 100 of CPC with the concurrent findings of fact of the Courts below.

20. Accordingly, this Second Appeal is dismissed. There shall be no order as to costs.

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

M.S.RAMACHANDRA RAO, J

Date : 14.10.2016
Gra/*