

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

SECOND APPEAL No.949 OF 2016

JUDGMENT:

The instant second appeal is preferred challenging the judgment and decree in A.S.No.21 of 2014 on the file of XI Additional District Judge, Tenali dated 12.10.2015, whereby, judgment and decree in O.S.No.272 of 2009 on the file of Additional Senior Civil Judge, Tenali, Guntur District, dated 28.01.2013 has been confirmed.

Heard the learned counsel for the appellant.

Learned counsel appearing on behalf of the appellant submits that the lower appellate court miserably failed to appreciate the error apparent on the record that the trial court instead of allowing the appellant/plaintiff to prove her case in the suit filed by her formulated issues to disprove the case of the defendants basing on the version of the defendants against settled principle of law.

In addition to above, the lower appellate court has confirmed the trial court judgment instead of considering the matter on evidentiary value of the exhibits as per the Evidence Act.

Based upon the pleadings, material available on record and after hearing on both sides, the trial court has framed the following issues for determination of the suit:

1. *Whether K.Hanumayamma got right and title over the plaint schedule property?*

2. *Whether Will, dated 04.02.2004 allegedly executed by K.Hanumayamma is true and valid?*
3. *Whether the plaintiff is entitled for declaration and possession as prayed for?*
4. *To what relief?*

It is pertinent to mention here that on behalf of appellant/plaintiff, her husband was examined as PW.1 and the vendors of appellant were examined as PW.2 to PW4. Registered sale deed dated 02.09.2002 was marked as Ex.A1. Office copy of legal notice dated 14.09.2009 was marked as Ex.A2. Postal acknowledgments were marked as Exs.A3 to A6. Reply notice dated 05.10.2009 was marked as Ex.A7. House tax demand notices for the years 2007 to 2009 were marked as Exs.A8 and A9. House tax payment receipt for the year 2007-08 & 2008-09 was marked as Ex.A10. Office copy of application given by the appellant/plaintiff was marked as Ex.A11. Certified copy of order, dated 15.07.1966 passed in I.P.No.7 of 1963 on the file of Additional Sub-Ordinate Judge, Tenali was marked as Ex.A12. Certified copy of order dated 16.11.2004 passed in I.A.No.1041 of 1998 in I.P.No.7 of 1963 on the file of Additional Senior Civil Judge, Tenali was marked as Ex.A13.

Similarly on behalf of the defendants, D3 was examined as DW.1 and certified copy of sale, dated 06.03.1969 in O.S.No.52 of 2005 on the file of P.D.M., Tenali was marked as Ex.B1 and the Agreement of Sale, dated 12.10.1993 purportedly executed by the vendors of the defendants (sic) namely PWs.2 to 4 (sic) in favour of one Kunala Hanumayamma and her son Subba Rao was marked

as Ex.B2 and one of the attestors of Ex.B1 was examined as DW.2 and the scribe was examined as DW.3.

After hearing both sides and on considering the oral and documentary evidence, the trial Court opined that the defendants have failed to file any Will dated 04.02.2004 and no witness was examined in proof of such Will. Thus, the defendants have failed to prove the execution of the Will dated 04.02.2004 by Kunala Hanumayamma, the mother-in-law of D.1. Consequently, decided the issue No.2 against the defendants and in favour of the appellant/plaintiff. However, the trial Court gave a categorical finding that the defendants acquired right, title and possession through their predecessor in title under Ex.B1 sale certificate, which is in force. When the appellant/plaintiff and her vendors were never questioned Ex.B1 sale certificate, there is no substance in the contention of the appellant/plaintiff that no permission was obtained for sale of the schedule property in the Court auction, under the provincial of Insolvency Act. Even, according to the appellant/plaintiff, the possession was not delivered as per the averments in the sale deed-Ex.A1. Therefore, the appellant/plaintiff has not acquired any right under Ex.A1 and she is not entitled for declaration and possession.

Being aggrieved by the above noted finding, the appellant/plaintiff challenged the same before the appellate court vide A.S No.21 of 2014.

On a perusal of the impugned order in A.S.No.21 of 2014, dated 12.10.2015, it is an admitted fact that originally the schedule property belongs to one Chunduru Lakshmi Narasimha

Rao and he got four sons namely (1) Chunduru Siva Satynarayana, who is examined as PW.2 (2) Chunduru Murali Krishna, who is examined as PW.3, (3) Chunduru Venkata Narendra Babu, who is examined as PW.4 and (4) Chunduru Nageswar Rao, who died unmarried. It is also an admitted fact that the said Chunduru Lakshmi Narasimha Rao died intestate on 29.04.1992 leaving behind PWs.2 to 4 as his legal heirs to succeed his estate.

It is also not in dispute that during the lifetime of Chunduru Lakshmi Narasimha Rao, he filed debtor IP No.7 of 1963 on the file of Additional Senior Civil Judge, Tenali against several creditors including Kunala Hanumayamma, who was shown as 8th respondent under Section 13 of Insolvency Act. But, as per the certified copy of order, dated 15.07.1966 the said Chunduru Lakshmi Narasimha Rao was adjudicated as insolvent and his estate is vested in the official receiver for the purpose of administration while granting one year time for discharge. Therefore, it is not the creditors, who filed the petition against the said Chunduru Lakshmi Narasimha Rao, as claimed by the appellant/plaintiff. The said Chunduru Lakshmi Narasimha Rao had filed the said petition in I.P.No.7 of 1963, which was allowed adjudicating the said Chunduru Lakshmi Narasimha Rao as insolvent.

According to the appellant/plaintiff, after the death of Chunduru Lakshmi Narasimha Rao, his sons PWs.2 to 4 herein were brought on record vide orders dated 01.07.1998 passed in I.A.No.1169 of 1995. Subsequently, he filed a petition in I.A.No.1041 of 1998 seeking the order of discharge alleging that

their father Chunduru Lakshmi Narasimha Rao filed the Insolvency Petition and that he was adjudicated as insolvent on 15.07.1966. The insolvent died on 29.04.1992. Subsequent to the adjudication as insolvent, the time for discharge was extended from time to time till 15.07.1992 and no application was filed by any creditor for the extension of time for discharge.

The stand of appellant/plaintiff is that most of the creditors passed away and their debts are barred by time, and as such, there is nothing for official receiver to administer in this case and no purpose would be served by continuing the official receiver etc. As per the orders dated 16.11.2004 marked as Ex.A13, the said petition was allowed by giving absolute discharge to the petitioner for the liabilities of the insolvent. Therefore, according to the appellant/plaintiff, since the discharge petition was allowed, all the properties vested in official receiver get reverted to the vendors of the plaintiff. Thus, they are the absolute owners of the properties including the schedule property. Therefore, the acquisition made by Kunala Hanumayamma in a Court auction is not valid and enforceable.

Thus, according to the appellant/plaintiff, she has validly purchased the schedule property from PWs.2 to 4 through registered sale deed dated 02.09.2002 and became the owner of the schedule property. Subsequently, her name was mutated in Tenali Municipality and it was assessed for property tax and demand notices, which were issued to the appellant/plaintiff under Exs.A8 and A9 and tax was paid under Ex.A10.

The appellant/plaintiff further contended that during the road widening, an extent of about Ac 0.10 sq. yds., of site was acquired by Municipality. Therefore, the appellant/plaintiff as owner staked claim by submitting a letter dated NIL to the Municipality marked under Ex.A11. But due to objections raised by the defendants, it is pending. Thus the appellant/plaintiff sought to contend that she acquired right and title over the schedule property. Since the defendants are in illegal possession, the appellant/plaintiff is entitled for recovery of possession etc.

It is further contended that the husband of appellant/plaintiff, who claimed to be well acquainted with the facts of the case and looking after the property and its management, was examined as PW.1. The vendors of the appellant/plaintiff were examined as PWs.2 to 4 and Exs.A1 to A13 were marked. The Evidence of PW.1 is in proof of the sale deed Ex.A1. Similarly the evidence of PWs.2 to 4 is not only in proof of the sale deed Ex.A1, but also in proof of their right, title and possession based on Exs.A12 and A13.

However, it is an admitted fact that D.1 is the daughter-in-law of Kunala Hanumayamma and D2 to D4 are the sons of D1 through Kunala Subba Rao. The said Kunala Subba Rao, predeceased his mother Hanumayamma, and on the death of Hanumayamma, the defendants are proved to be only legal heirs to succeed to the estate of Hanumayamma. Therefore, the execution of the Will is of no consequence and the observations of the lower Court on this aspect are justified under law.

It is also not in dispute that Kunala Hanumayamma purchased 3/5th share in the Court auction vide E.P.No.386 of 1968 in O.S.No.52 of 1963 on the file of District Munsif, Tenali on 29.01.1969 and the said sale was confirmed and for proof of the same, the defendants filed the certified copy of sale marked as Ex.B1. As per the sale certificate, Kunala Hanumayamma has been declared the purchaser at a sale by public auction on 29.01.1969 the joint 3/5th share on 06.03.1969 of the immovable property of the judgment debtors Nos. 2, 3 and 5, who are PWs.2 to 4 herein described in the schedule tiled shop. The said sale has not been set aside in any proceedings.

It is also an admitted fact that the defendants have been in possession and enjoyment of the schedule property since 1966. Even as per the pleadings and evidence of PWs.1 to 4, the defendants were in possession of the schedule property even prior to the death of father of the vendors of the appellant/plaintiff, who died on 29.04.1992. Though the defendants purchased 3/5th joint share under Ex.B1, they also claimed to have purchased 2/5th joint share of PWs.2 to 4 under an Agreement of Sale, dated 12.10.1993, and obtained the agreement of sale under Ex.B2, who executed while receiving total consideration, agreeing to execute the sale deed after termination of insolvency proceedings. Thus, it appears as indicated from Ex.B2, the defendants were in possession of the schedule property as tenants, since long prior to 1981. It is also an admitted fact that the defendants were in possession of the total extent of the schedule property covered by Ex.A1, even before part of it was acquired by Municipality.

It is evident from the evidence of PWs.3 and 4 and is the relevant fact that the defendants have been in possession and enjoyment of the schedule property from 1966. It is proved that they are in possession as purchasers of the same under Ex.B.1

In view of the facts recorded above, I find no merit in the instant Appeal and the same is accordingly dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand dismissed.

JUSTICE SURESH KUMAR KAIT.

Date : 05-12-2016

Note : **L.R. Copy to be marked.**
(B/o)
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