

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

A.S.No.1483 of 1995

JUDGMENT:

The 1st plaintiff filed this appeal being aggrieved by the judgment and decree in O.S.No.103 of 1982, dated 06.05.1988, on the file of the Principal Subordinate Judge, Narasarpet, granting injunction in his favour in respect of the plaint schedule property, but however, rejecting the relief of declaring the plaintiffs as owners of the plaint schedule property, comprises of land in Sy.No.72/2/1/A, 75/5/1/A and 72/7, admeasuring Ac.13.07 cents, situated in Konduru village, Sattenapalli taluq. The Court below further gave liberty to the defendant to take such course that is open to him to take possession of his half extent of land admeasuring Ac.6.55 cents after getting it demarcated.

2. For the sake convenience, the parties are referred to as arrayed in the suit.

3. The material averments in the plaint are as follows:

One Turaga Venkata Surya Mallikarjuna Rao is the original owner of the schedule land, and the 1st plaintiff is his lessee. As the 1st plaintiff could not able to cultivate the entire extent of land, he took the 3rd plaintiff as co-lessee and they are in possession of the entire extent of schedule land as tenants of the original owner. The original owner offered to sell the schedule land. The 1st plaintiff bargained to purchase the entire land for Rs.71,000/- The 3rd plaintiff agreed to purchase 1/4th of schedule land. The 1st plaintiff utilized the jewelry of his wife, the 2nd plaintiff, to purchase the land and hence he obtained the agreement of sale for the undivided half of the schedule land in the name of his wife, the 2nd plaintiff, and 3rd plaintiff. He wanted to have the remaining half of

extent of schedule land. As he had no sufficient money, he approached the defendant through the 3rd plaintiff for a loan of Rs.20,000/-. The defendant promised to lend that amount with interest at 12% p.a. on a condition that the agreement of sale shall be obtained in his name, towards security of the loan. Accordingly, the agreement was executed in favour of defendant as benami of the plaintiff. The defendant took away the agreement from the 1st plaintiff, but did not pay the amount to the 1st plaintiff as agreed. The 1st plaintiff stated that the defendant committed breach of trust and he also got obtained registered sale deed in his name behind his back. Hence the plaintiff filed the suit for declaration and injunction.

4. The defendant filed written statement denying the plaint averments. He contended that the plaintiffs have no capacity to purchase the schedule land. The plaintiffs collusively filed the suit in order to knock away the schedule land. The amount alleged to have been paid by the plaintiff is towards rental amount, but not the amount paid under agreement of sale. The plaintiffs taking advantage of helplessness of the original owner of the schedule land, tried to snatch away the entire schedule property. He further contended that the plaintiff never approached him for any loan. He admitted that the plaintiff entered into agreement of sale for the property situated on the eastern side of the schedule land and the plaintiff does not have any right over the western portion of the schedule land. He stated that he entered into an agreement of sale with the owners of the property for an extent of Ac.6.56 cents of land situated on the western side of the schedule land, for a sum of Rs.35,500/- and he already paid a sum of Rs.25,000/- on 14.02.1981 under Ex.B1 and also obtained registered sale deed on

02.07.1982 under Ex.B5, and hence he is the owner of the property of an extent of Ac.6.55 cents. After taking possession of the purchased land, the defendant raised cotton crop therein. He admitted that he is no way concerned with regard to eastern half of the schedule land.

5. The trial Court framed the following issues arising out the of pleadings of the parties;

- 1) Whether the sale agreement dated 14.02.1981 is benmami for the benefit of 1st defendant?
- 2) Whether the agreement of sale dated 15.01.1981 is true?
- 3) Whether there is a plot of Ac.6.55 cents as mentioned in the agreement of sale, dated 14.02.1981 is specified and demarcated separately?
- 4) Whether the plaintiffs are in possession of the entire plot and entitled for permanent injunction?
- 5) To what relief?

Addl.issues:

1. Whether the plaintiff is entitled for a declaration decree as prayed for?
2. Whether the court fee paid is not correct?

6. During course of trial, in support of their case, the 1st plaintiff examined himself as PW 1 and also examined PWs 2 to 6 and produced Exs.A1 to A13. The defendant examined himself as DW 1 and also examined DWs 2 to 5 and produced Exs.B1 to B15. Ex.X1 and Exs.C1 to C4 were also exhibited.

7. After hearing the arguments on both sides and taking into consideration the oral and documentary evidence on record, the learned Principal Subordinate Judge held that the plaintiffs established that they

are in possession of the entire extent of the suit schedule land, but so far as the title is concerned, the learned Judge came to the conclusion that the defendant is the owner of half of the extent of schedule land he having purchased the same under Exs.B1 and B5. The learned Principal Subordinate Judge also gave liberty to the defendant to seek recovery of the possession of the land.

8. Aggrieved by the said judgment and decree, the 1st plaintiff alone preferred the appeal, contending that the court below erred in refusing the relief of declaration and that the plaintiffs who are admittedly the tenants of the entire extent of land are entitled to first preferential right to purchase the lands.

9. The learned counsel for the defendant, on the other hand, submitted that the Court below has extensively and minutely discussed the voluminous oral and documentary evidence on record and rejected the contention of the plaintiff that the suit agreement Ex.B1, which is in his favour in respect of half of the suit schedule land, is not benami agreement as contended, and the court below has conclusively held that it is the defendant who is the owner of an extent of Ac.6.55 cents of land in suit survey number. The learned counsel further submitted that there are no merits in the appeal and the same is liable to be dismissed.

10. The points that arise for consideration in this appeal are:-

- (i) Whether the plaintiff is entitled to be declared as owner of an extent of Ac.6.55 cents of land out of the suit survey numbers, as claimed?; and
- (ii) Whether the judgment and decree is liable to be set aside, modified or varied?

Points:-

11. There is no dispute in so far as the fact that the 1st plaintiff is the person in possession of the entire extent of land, he being the lessee and the original owner thereof is one Turaga Venkata Surya Mallikarjuna Rao. It is the case of the plaintiff that in or about 1980-81 when the landlord wanted to sell the lands, and he being the person in possession of the property, there is an understanding in between the landlord Mallikarjuna Rao and the 1st plaintiff that the entire extent of Ac.13.00 land will be purchased for a total consideration of Rs.71,000/-. According to the plaintiff, he was not in a position to mobilize the funds. However, half of the amount was paid by the plaintiff to the owner and the document was executed in so far as the eastern part of the land in the suit survey numbers. However, since he was in need of money, the plaintiff approached the defendant, who was having well acquaintance with the other two plaintiffs/non-appellants to give a loan of Rs.20,000/-, so that he can purchase the property from the original owner. It is the contention of the plaintiff that though the defendant agreed to give the loan of Rs.20,000/-, what he has done is he insisted the plaintiff to execute an agreement of sale in his favour in respect of the western half of the land in suit survey numbers.

12. It is further contended by the plaintiff that this act of the defendant was with an intention to defraud the 1st plaintiff, who wants to purchase the entire land from the owner since the 1st plaintiff was in possession of the land as tenant for several years. It is further contended that the defendant has fraudulently obtained the document in his favour for the remaining western half of the land and as a matter of fact the said

document in favour of the defendant is a benami transaction and the ostensible owner there of is the plaintiff.

13. The contention of the defendant that could be culled out from the submission of the learned counsel is that it is the contention of the plaintiff that there was money transaction in between them and the transaction was obtained with fraudulent intentions. On the other hand, the defendant contends that when the 1st plaintiff was unable to pay money to the owner Mallikarjuna Rao, the defendant has entered into an agreement of sale with the owner for the western half of the land on 14.02.1981 and subsequently on 02.07.1982 the owner Mallikarjuna Rao has executed a sale deed in favour of the defendant in respect of the western part of the suit survey numbers. Therefore, the contention of the defendant is that the 1st plaintiff is not entitled to be declared as the owner of the property and as a matter of fact it is he who has purchased the land from the original owner for a valid consideration.

14. Having perused the voluminous oral and documentary evidence on record and the judgment of the trial Court, which has discussed the material on record extensively, what is observed is that substantial facts are not in controversy and the only contentious aspect is as to whether the agreement Ex.B1, dated 14.02.1981, standing in the name of the defendant in respect of Ac.6.55 cents of land, is benami, and as a matter of fact, it is the plaintiff who purchased the suit land. The plaintiff wanted to purchase the entire land for which Ex.A1 agreement of sale was entered into on 15.01.1981. However, since the plaintiff could not mobilize the funds, he requested the defendant to lend a sum of Rs.20,000/- for which the defendant agreed, subject to condition that the agreement of sale in respect of half of the suit schedule land should be in

his favour and that was intended to be by way of security. Therefore, the fact that Ex.B1 agreement of sale is in favour of the defendant is not in dispute. The defendant denied the said contention and contended that the plaintiff agreed to purchase only half of the land under the suit survey number and the remaining half was purchased by the defendant himself under Ex.B1 agreement and subsequently, the sale deed Ex.B5 was executed by the owners.

15. It is also borne from the record that though the suit schedule land is shown to be an extent of Ac.13.10 cents, there is no controversy in so far as half of the bit is concerned, which is towards the eastern side. Admittedly, the plaintiffs have purchased the same under Ex.A1 and they are in possession thereof. The controversy is with regard to the remaining half which is towards western side, admeasuring Ac.6.55 cents.

16. In view of the above rival contentions, it is for the plaintiff to prove his title over the suit schedule property, even though his possession is not in issue.

17. According to the plaintiff, who is examined as PW 1, the defendant is not even aware about the location of the land covered by Ex.B1, and that he was not even present when the agreement Ex.B1 was executed. Though the plaintiff contended that he could mobilize substantial amount for purchasing the entire extent of land, but was falling short of Rs.20,000/-, the evidence on record is not satisfactory. The plaintiff could not show by cogent evidence that he was in a position to pay the sale consideration amounting to more than Rs.35,000/- as contended. That apart, the specific case of the plaintiff is that even though the defendant having promised that he will give Rs.20,000/-, subject to condition that the agreement of sale should be in his favour,

the plaintiff stated that the defendant never paid the said amount even though he took away the agreement Ex.B1. This conduct of the plaintiff cannot be accepted. When the defendant did not even pay the amount of Rs.20,000/- as promised, he would not have obtained the agreement of sale in favour of the defendant, more particularly, even hand it over to the defendant.

18. Even though the plaintiff produced as many as 4 witnesses, their evidence is not trustworthy in so far as it is in respect of the claim of the plaintiff that it is he who paid the amount covered by Ex.B1, even though the document was obtained in the name of the defendant. The plaintiff however admitted that Ex.B1 does not mention anywhere that it is he who paid sale consideration on behalf of the defendant. He also admitted that the agreement Ex.B1 was handed over to the defendant on the day when it was executed on the basis of a promise made by the defendant that he will pay an amount of Rs.20,000/- subsequently. However, it is noticed that the stamp paper on which Ex.B1 executed was purchased by the defendant and the plaintiff is not aware as to from where that stamp paper was purchased.

19. Even the evidence with regard to payment of consideration is not satisfactory and the plaintiff could not show that he paid the consideration for the entire land in suit survey number including the land which is covered by Ex.B1 agreement, which is in favour of the defendant. Admittedly, the plaintiffs have also purchased half of the land in suit survey number and the payments that he made, as evident from the documents produced by him, are in respect of his share of the land and rents, but that cannot be said to be the consideration for the western half of the suit land, covered by Ex.B1.

20. On the other hand, the defendant produced documentary and oral evidence, which clearly show that it is he who purchased the land covered by Ex.B1 agreement and subsequently got a registered sale deed Ex.B5, and in view of discrepancy in the boundaries, he also got a registered rectification deed under Ex.B6. With regard to financial capacity of the plaintiffs to part with the consideration for the entire extent of Ac.13.00 of land, a circumstance relied upon by the defendant is that within few months after Ex.B1, the plaintiff borrowed a sum of Rs.7,500/- from the defendant and executed a promissory note under Ex.B4, dated 06.07.1981, and the plaintiff admitted the same. This circumstance negatives the claim of the plaintiff that as a matter of fact it is he who paid the entire consideration for Ac.13.00 of land.

21. Upon carefully perusing the evidence on record, I see no reason to interfere with the finding of fact, recoded by the trial Court that the plaintiff could not establish that he is the ostensible owner of an extent of Ac.6.55 cents of land towards west in the suit survey numbers, even though the agreement there for stands in the name of the defendant. The Court below has considered the evidence on record minutely in proper perspective and held that the plaintiff could not prove his case.

22. With regard to the possession, the consistent case of the plaintiff is that he had been the tenant of the entire extent of land for several years in the past. He has produced evidence to show that even after the agreements, viz., Ex.A1 and B1 and also registered sale deed Ex.B5, he continued to be in possession of the land. The defendant, who claims to have been put in possession of the property subsequent to the

registered sale deed, could not show that he has been in physical possession of the property.

23. Even though there is substantial oral and documentary evidence on that aspect, suffice it to refer to the reports of the advocate-commissioners, namely Exs.C1, C2 and C3. Immediately after the suit was filed, an advocate-commissioner was appointed, who inspected the land on 25.06.1982 and submitted his report Ex.C1. It is clearly mentioned therein that there is nothing on record to show that it was divided into two bits, half in respect of Ex.A1 and the remaining half in respect of Ex.B1. The entire land admeasuring more than Ac.13.00 was found to be in two bits, one is more than Ac.11.00 and the other is Ac.2.00. The commissioner did not find any division of land, dividing the land into Ac.6.55 cents each. Therefore, it could not be said that after Ex.B1 agreement and registered sale deed Ex.B5, the defendant was put in possession of an extent of Ac.6.55 cents, as claimed by him.

24. Subsequently, the defendant himself got another advocate-commissioner appointed and his report is marked as Ex.C2. Even this advocate-commissioner gave same report in so far as physical features of the land are concerned. These two reports falsify the claim of the defendant that the entire extent of Ac.13.00 of land was divided into two plots from north to south, that the western half was purchased by him and he was in possession thereof from 1981 onwards by raising cotton crop, as claimed. The Advocate-commissioners did not find any cotton crop, as claimed by the defendant, on the other hand, both the advocate-commissioners submitted their reports which substantiate the claim of the plaintiff that he had been in possession of the suit lands in respect of the agreements of sale Ex.A1, Ex.B1 and registered sale deed Ex.B5. The

defendant could not even give proper boundaries of the land which he claims to have been put in possession.

25. The learned trial Judge has analyzed the entire evidence on record and arrived at a finding that though the defendant could prove that he is the owner of an extent of Ac.6.55 cents of land, he could not prove his possession, and as a matter of fact, there are admissions from his own witnesses which go to show that it is the plaintiff, who had been in continuous possession and enjoyment of the entire extent of Ac.13.10 cents of land in suit survey numbers. Therefore, the trial court has rightly held that the plaintiff is in possession and enjoyment of the property and he cannot be dispossessed without following due process of law. The defendant, who is the owner of the property, has to take appropriate steps to recover the possession of the property from the plaintiff by following due process of law, but till such time, there can be an injunction in favour of the plaintiff, restraining the defendant from interfering with his possession and enjoyment over the subject property.

26. Having perused the entire material on record, I see no reason to take a different than that of the view taken by the Court below. I see no merit in the appeal.

27. The Appeal is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAI SWAL,J

Date: 28.08.2017

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