

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

S.A.Nos.736 & 738 OF 2017

COMMON JUDGMENT

Since the issue involved in both the appeals is one and the same and they arise out of the common judgment dated 5.6.2017 rendered in A.S.Nos.20 & 21 of 2014, by the Principal District Judge, Prakasam at Ongole, they are being disposed of by this common judgment.

The plaintiffs in O.S.No.50 of 2004 are the appellants in S.A.Nos.736 & 738 of 2017 and defendants in O.S.No.115 of 2006 on the file of the Senior Civil Judge, Kandukur. The respondent-defendant herein is the plaintiff in O.S.No.115 of 2006 and defendant in O.S.No.50 of 2004.

O.S.No.50 of 2004 was filed by Thanniru Ankamma-tenant seeking specific performance of agreement of sale dated 10.09.1993 executed by the defendant-landlady and also to deliver possession. The defendant-landlady filed O.S.No.115 of 2006 on the file of Principal Junior Civil Judge, Kandukur on 20.07.2005, for recovery of possession. Later on, the same was transferred to the Senior Civil Judge, Kandukur, by orders of the District Court on 12.10.2006.

It is the case of the appellants-plaintiffs that the suit schedule property in an extent of Ac.6.48 cents in Sy.No.39/4

of Kovur Village, Kandukur Mandal, Prakasam District, originally belonged to one Kunam Pitchi Reddy and his four brothers of Pandalapadu Village and defendant is resident of Repalle Town of Guntur District. The 1st plaintiff being a mason used to construct houses in northern parts of A.P and he constructed number of houses in and around Repalle including the house belonging to the husband of the defendant. The husband of the defendant approached the 1st plaintiff to suggest any agricultural lands in Prakasam District and the 1st plaintiff has shown the suit schedule land. The husband of the defendant purchased the subject land in the name of the defendant under registered sale deed. Thereafter, with the consent of her husband, the defendant leased out the subject land to the 1st plaintiff for raising casuarina plantation for a period of six years and executed a lease agreement dated 1.8.1995, which was renewed on two occasions for a period of six years each. Subsequently, the same was renewed for another six years. When the defendant and her husband offered to sell the subject land, the 1st plaintiff agreed to purchase the same for an amount of Rs.1,10,000/- and the same was reduced into writing on 10.09.2003.

The defendant filed written statement admitting that the suit schedule property originally belonged to one Kunam

Pitchi Reddy and his four brothers and the same was purchased by her under a registered sale deed dated 25.4.1985 for a sum of Rs.33,000/- and possession was also delivered in her favour. The 1st plaintiff was no way concerned with the purchase of the property by the defendant. The lease agreement dated 1.8.1985 was admitted. Since the 1st plaintiff committed default regarding the terms of lease agreement, the defendant decided to sell away the suit schedule property and executed an agreement of sale dated 15.6.2003 in favour of one Ch.Hari Babu s/o Venkaiah, and the 1st plaintiff is aware of the same and filed the suit by creating an agreement with forged signature. Hence, the defendant issued a notice on 2.8.2004 terminating the lease and asking the 1st plaintiff to handover vacant possession of the property. The defendant never agreed to sell the plaint schedule property to the 1st plaintiff on 10.9.2003 or on any other date.

Based on the above averments, suit for recovery of possession was filed by the defendant.

Separate issues were framed in both the suits and since O.S.No.115 of 2006 was transferred to the same Court where O.S.No.50 of 2004 was pending, evidence was recorded in O.S.No.50 of 2004. On behalf of the plaintiffs, PWs.1 to 3 were examined and Ex.A1 was marked. On behalf of the

defendant, DWs.1 to 5 were examined and Exs.B1 to B7 & Exs.C1 and C2 were also marked.

After perusing the material available on record and after hearing the learned counsel on either side, the trial Court by its common judgment and decree dated 3.1.2014 dismissed O.S.No.50 of 2004 by holding that Ex.A1-suit agreement is forged one and consequently decreed O.S.No.115 of 2006 filed for recovery of possession, with costs.

Aggrieved by the same, the appellants herein, preferred A.S.Nos.20 & 21 of 2014 before the Principal District Judge, Prakasam at Ongole.

The Principal District Judge by common judgment and decree dated 5.6.2017 dismissed the appeals confirming the decree and judgment passed in O.S.No.50 of 2004, dated 3.1..2014. Against the said judgment and decree, the present appeals were filed by the legal representatives of the plaintiff as the original plaintiff died during the pendency of the suit in the trial Court.

Learned counsel appearing for the appellants submits that in view of the averments made by the defendant in her counter that she wanted to sell away the suit schedule property to one Ch.Hari Babu under an agreement of sale

dated 15.6.2003 and received advance of sale consideration, the suit itself was not maintainable.

Admittedly, the suit schedule property is in possession of the 1st plaintiff. The agreement of sale does not transfer title of the respondent herein to the alleged agreement holder and the respondent continues to remain the owner of the property till the sale deed is executed and registered.

On the basis of the evidence available on record and in view of the concurrent findings recorded by both the Courts below, this Court sees no question of law much less substantial question of law involved in the present second appeals.

Accordingly, both the Second Appeals are dismissed at the admission stage. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

27th October, 2017
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