

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.1063 of 1999

JUDGMENT:

This Second Appeal is preferred by the appellant/claimant in E.A.No.1164 of 1990 in E.P.No.321 of 1990 in O.S.No.87 of 1988 aggrieved by the Decree and Judgment dated 01.09.1999 in A.S.No.119 of 1994 passed by the III Additional District Judge, Guntur whereby and whereunder the learned Judge allowed the appeal filed by the decree holder by setting aside the order in E.A.No.1164 of 1990 in E.P.No.321 of 1990 in O.S.No.87 of 1988 on the file of I Additional District Munsif, Guntur filed for raising of attachment.

2) The parties in this appeal are referred as they were arrayed in the Court below.

3) The factual matrix of the case is thus:

a) The case of the claimant in E.A.No.1164 of 1990 in E.P.No.321 of 1990 is that on 15.04.1985, the JDR agreed to sell the petition schedule property together with thatched house for a sum of Rs.65,000/- under Ex.A1—agreement to sell and received Rs.62,000/- towards advance, agreeing to execute a regular registered sale deed on demand and also delivered vacant possession; since then he was in peaceful possession and enjoyment of the petition schedule property along with thatched house; he spent lot of amount for development of the property; several times he requested the JDR to execute registered sale deed, but JDR dodged the matter on the ground that he did not receive permission from

Urban Land Ceiling (ULC); having waited a long time and got vexed with the attitude of the JDR, he got issued legal notice dated 05.02.1990 to JDR, for which the JDR replied with false allegations and claimed damages. His further case is that on the intervention of elders, JDR obtained ULC permission and executed a regular registered sale deed in his favour in respect of the schedule property on 27.08.1990; JDR and DHR are close friends and they obtained collusive decree against him in O.S.No.87/88 and got attached the property in I.A.No.100/88 before Judgment. The DHR filed E.P.No.321/1990 before the I Additional District Munsif Court, Guntur against JDR and the same was pending. Hence the petition claiming the property and to raise the attachment as he being the owner of the property.

- b) The 1st respondent—JDR was set *ex parte*.
- c) The 2nd respondent—DHR filed counter denying the allegations made in the petition and contended that in the suit, the Court granted attachment before judgment and subsequently it was made absolute. No petition was filed to raise the attachment and if the property was in possession and enjoyment of the claimant, he should have filed a petition to raise the attachment long back. She also contended that JDR received notice from the claimant and gave reply and contesting the matter. The Trial Court decreed the suit with costs and ordered JDR to pay Rs.300/- p.m subject to some conditions. R.2 further contended that the sale deed was brought into existence in the year 1990 to defeat her claim. She thus prayed to dismiss the petition.

d) PWs.1 to 5 were examined and Exs.A.1 to A.8 were marked on behalf of claimant. RWs.1 and 2 were examined and Exs.B.1 to B.10 were marked on behalf of 2nd respondent—DHR.

e) After hearing both sides and basing on the evidence on record, the Trial Court allowed the petition and raised the attachment.

f) Aggrieved, the Decree Holder preferred an appeal—A.S.No.119/1994 on the file of III Additional District Judge, Guntur, whereby and whereunder the learned Judge allowed the appeal.

Hence this Second Appeal at the instance of claimant.

4) The Second Appeal was admitted on the basis of substantial questions of law framed in ground No.1(a) to (e) in the grounds of appeal which are as follows:

- (i) *Whether the appellate Court can allow the appeal and set aside the decree without reversing or even discussing the findings of trial Court on a material aspect?*
- (ii) *Whether any Court can say that a mere look at the document suggests that it is fabricated document without giving any reasons or grounds for coming to that conclusion?*
- (iii) *Whether payment and production of tax receipts is the only way to prove possession and oral evidence cannot be adduced to prove possession?*
- (iv) *Whether the court below is justified in completely ignoring the evidence of PWs.1 to 4, whose evidence the trial Court found as cogent and true regarding possession, without assigning any reasons?*

(v) *Whether the reasons given by the appellate Court for interfering with the order of the trial Court are perverse and without consideration at all?*

5) Heard arguments of Sri Md.Naymathullah, learned counsel appearing for Sri G.Pedda Babu, learned counsel for appellant and Sri P. Gopal Das, learned counsel for respondent No.1. Though notice to respondent No.2 was served, there is no representation on his behalf.

6) Learned counsel for appellant would vehemently argue that lower appellate Court grossly erred in allowing the appeal on wrong and perverse appreciation of evidence. It allowed the appeal on a presumption that the very first look of Ex.A1—agreement to sell would suggest that it was a fabricated document. The appellate Court has not evaluated the evidence of PWs.1 to 5 in a proper perspective to arrive at an objective conclusion regarding the *bona fides* of the appellant in purchasing the petition schedule property. He submitted that evidence of PWs.1 to 5 would clearly show that the appellant purchased the suit property under Ex.A1—agreement to sell for a valuable consideration of Rs.65,000/- and at the time of agreement he paid Rs.62,000/-. Since the permission from the urban Land Ceiling Authorities, Guntur was required, he could not obtain the sale deed on the very day of agreement to sell. The evidence would show, appellant subsequently orally requested JDR on a number of occasions to execute registered sale deed in terms of Ex.A1, but he (JDR) postponed on one pretext or other. Thereafter, exchange of notices took place wherein in the reply notice, the JDR demanded additional amount as damages which the appellant

refused. Thereafter, at the intervention of elders, JDR was chastised for claiming additional amount. The JDR executed Ex.A7—registered sale deed in favour of the appellant but reluctantly. He bore grudge against the appellant and colluded with DHR and fabricated a false suit and got attached the petition schedule property and brought to sale. Thus, the evidence of PWs.1 to 5 would clearly demonstrate that Ex.A1—agreement to sell was prior in point of time than the suit and attachment obtained by DHR and therefore, agreement will prevail over attachment. On this proposition he cited the following judgments.

1. *Devarapalli Venkata Narasimharao vs. Pilla Ramayamma*¹
2. *Vannarakkal Kallalathil, Sreedharan vs. Chandramaath Balakrishnan*²

He thus prayed to allow the appeal.

7) Per contra, learned counsel for 1st respondent/DHR while supporting the judgment of the lower appellate Court would argue that Exs.A1—agreement to sell and Ex.A7—sale deed were brought-forth on the same date by the appellant and JDR in order to defeat the claim of DHR. Appellant is not a *bona fide* purchaser for value without notice. The facts and circumstances would clearly demonstrate this aspect. Learned counsel vehemently argued, though the appellant claim to have purchased the petition schedule property for Rs.65,000/- and paid almost the entire sale amount except Rs.3,000/-, he did not obtain sale deed on the very same day by paying the balance amount which was only a paltry sum. Basing on this strong suspicious circumstance, the lower appellate

¹ 1987 (1) ALT 718

² (1980) 3 SCC 291

Court doubted the genuineness of Exs.A1 transaction. Further, the appellant could not show reliable document to establish his possession over petition schedule property. On the other hand, he admitted that he has not paid any tax. It is an indicative that he was not in possession. Considering all these aspects the lower appellate Court rightly allowed the appeal. He thus prayed to dismiss the appeal.

8) **Substantial questions 1 to 5:**

a) The gist of substantial questions is to the effect whether the appreciation of evidence made by the lower appellate Court is in accordance with the principles of Evidence Act or was it perverse.

b) On a careful scrutiny of facts and evidence both oral and documentary, I am of the considered view that the lower appellate Court rightly allowed the appeal for the following reasons:

(i) Through the evidence of PWs.1 to 5, the appellant tried to project that he was the *bona fide* purchaser of petition schedule property for valuable consideration. He also sought to project that Ex.A1 was a genuine document and it was prior in point of time than the attachment made by the DHR. Ex.A1 would read as if the appellant purchased the petition schedule property for Rs.65,000/- and paid an advance of Rs.62,000/- and possession was also allegedly given to him under Ex.A1. It is mentioned that as and when the appellant paid the balance amount of Rs.3,000/- and demanded, the JDR would execute the registered sale deed. As rightly observed by the lower appellate Court, having paid almost the entire sale consideration, it is not known why the

appellant/claimant did not try to obtain registered sale deed on the date of Ex.A1 itself by paying balance amount which was only Rs.3,000/-. In the normal circumstances, no purchaser would keep pending the transaction when the balance amount to be paid is a small one. Probably to cover this lacuna, it is conveniently mentioned in the claim petition that when the appellant demanded him to execute the sale deed, the JDR dodged the matter on the pretext he did not receive the Urban Land Ceiling permission. It is to be noted that there is no recital in Ex.A1 that the Urban Land Ceiling permission was required for registration of sale deed and the registered sale deed would be executed after obtaining such permission. Therefore, the alleged permission is only a ruse invented for the first time while preparing claim petition. Even assuming that the said cause is true, it is highly unbelievable that it would take about 5 years for getting such permission. If really Ex.A1 transaction was genuine one and such a pretext was repeatedly projected by the JDR whenever the appellant used to request him to execute sale deed, the appellant would not keep silent till 1990. Therefore, the long and unsatisfactory explanation of the delay between Ex.A1—agreement to sell and Ex.A7—sale deed would raise an irresistible conclusion that both Exs.A1 and A7 were prepared on the same date and Ex.A1 was fabricated with the help of antedated NJ stamps.

(ii) Another circumstance would also create a doubt about Ex.A1—agreement. In para-5 of claim petition the appellant mentioned as if, at last when the elders and well-wishers intervened and chastised JDR, he obtained ULC permission and executed regular registered sale deed in his

favour. However, the order of the ULC authorities according permission was not filed into the Court. Thus, the said cause projected is a false one.

(iii) Another circumstance would also falsify the genuineness of Ex.A1. According to PWs.1 to 5, on the intervention of elders and well-wishers the JDR executed sale deed in favour of appellant but reluctantly. He proclaimed that he would see how the appellant would enjoy the property. Therefore, he colluded with the DHR and got filed a collusive suit and attached the petition schedule property. However, when the chronology of events are analysed, the question of JDR colluding with DHR to file a collusive suit does not arise. The suit was filed in the year 1988 itself and it was hotly contested by JDR. Whereas Ex.A7—sale deed was of the year 1990. Therefore, even if on the eve of registering sale deed, JDR proclaimed that he would see how appellant would enjoy the property peacefully, he cannot collude with DHR and file an antedated suit which is impossible. Therefore, though the evidence of PWs.1 to 5 may apparently look strong, but the circumstances belie their evidence and show that Exs.A1 and A7 were brought forth on the same date to defeat the claim of DHR. Thus, there is no perverse appreciation of facts and evidence by the lower appellate Court as argued by the appellant.

(v) The cited decisions will not improve his case. No doubt, the ratio in those decisions is to the effect that a prior agreement to sell would prevail over the subsequent attachment. However, when a prior

agreement is not a genuine one, it would not take precedence over attachment.

9) In the result, this Second Appeal is dismissed by confirming the judgment of the lower appellate Court passed in A.S.No.119 of 1994. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 14.11.2017

Murthy/scs

U. DURGA PRASAD RAO, J

