

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

SECOND APPEAL No.307 OF 2017

JUDGMENT:

The second defendant in O.S.No.133 of 2006 on the file of the Senior Civil Judge Court, Chirala is the appellant herein. The first respondent herein filed the said suit for declaration that she is the owner of the plaint schedule property and for a consequential injunction restraining the defendants from interfering with her possession and enjoyment of the plaint schedule property. The plaint schedule property consists of 120 square yards of site and a thatched house therein bearing door No.3-8-9 and another extent of 113 square yards of site situated in survey No.99/1, Old Municipal Ward No.3, T.S.No.5/1, Ward No.5, Vital Nagar, Perala Village, Chirala Municipality, Prakasam District.

The plaintiff filed the above suit stating that the first defendant was the father of the plaintiff and he had one son by name Venkateswarlu and three daughters. The father of the plaintiff was owner of an extent of 532.50 square yards of site situated in Vital Nagar, Chirala and the same was purchased under registered sale deed, dated 24.03.1962. He constructed a thatched house on the western end of the site and used to live therein. He used to do lime business. The only son died and his wife deserted prior to his death. The first defendant divided the site into four shares and executed three gift deeds in favour of his daughters and delivered possession of their respective shares. The gift deeds were acted upon. The item No.2 of the plaint schedule property was the property that was given under gift deed to the plaintiff. The first defendant retained item No.1. The plaintiff, who was working as a Lecturer, used to look after the entire family and in those circumstances, the first defendant out of love and affection gifted item No.1 of the plaint schedule house by executing a registered gift deed, dated 19.08.2003. The possession of the property was delivered on the date of execution of the registered gift

deed itself. While so, when the first defendant was ill, the mother of the first defendant prevailed upon the first defendant and got executed a unilateral gift cancellation deed on 19.08.2006 for the plaint schedule properties. The mother of the second defendant got executed another gift deed, dated 17.11.2006 in favour of the second defendant for the entire property. When the second defendant, taking advantage of the said document, was trying to interfere, the above suit was filed.

The written statement was filed by the first defendant admitting the execution of the registered gift deeds in favour of the plaintiff and handing over of possession to her. He further stated that his second daughter and his grandson, second defendant, got some documents executed when the first defendant was not in sound and disposing state of mind. After coming to know of the fraud committed by the second defendant and his mother, the first defendant wanted to lodge a criminal complaint against them and later on, he dropped the idea of lodging the criminal complaint. The gift cancellation deed, dated 19.08.2006 and the gift deed, dated 17.11.2006 in favour of the second defendant were obtained by second defendant and her mother by playing fraud.

The second defendant filed a separate written statement denying the plaint averments. He stated that he has no objection to decree the suit if the first defendant attends the Court and deposes that the second defendant and his mother influenced or caused the first defendant in executing the gift deed, dated 17.11.2006.

The fourth defendant filed a separate written statement denying the plaint averments and stated that the first defendant cancelled the gift deeds executed in favour of his daughters and executed gift deed in favour of the second defendant as he alone was looking after the first defendant and his wife, Gangamma, third defendant.

The fifth defendant also filed a separate written statement stating that the suit schedule property was gifted to the fifth defendant on 17.07.2003 and possession was delivered on the same day. Thereafter cancellation deed was executed on 19.08.2006 beyond the period of three years and the same is not binding.

On the above pleadings, the trial Court framed the following issues.

1. Whether the plaintiff is entitled for declaration as prayed for?
2. Whether the plaintiff is entitled for consequential permanent injunction as prayed for?
3. To what relief.

The plaintiff was examined as P.W.1 and Exs.A.1 to A.4 were marked in support of the case of the plaintiff. The fifth defendant was examined as D.W.1 and no document was marked in support of the case of the defendants.

The trial Court by its Judgment and decree, dated 11.08.2010 dismissed the suit. The suit was dismissed mainly on the ground that there was no corroborative evidence to establish Exs.A.1 to A.4. Against the said Judgment and decree, A.S.No.39 of 2011 was preferred by the plaintiff before the V Additional District Judge, Ongole and the lower appellate Court framed the following points.

1. Whether the first defendant is entitled to cancel Ex.A.1 and A.2 registered gift deeds executed in favour of the plaintiff unilaterally?
2. Whether the plaintiff is entitled to seek the relief of declaration and permanent injunction as prayed for?
3. Whether the appellant/plaintiff is entitled to seek the relief of setting aside the Judgment and decree passed by the learned Senior Civil Judge, Chirala, dismissing the suit? And
4. To what relief?

The lower appellant Court allowed the appeal by Judgment and decree, dated 16.12.2016 by declaring that the plaintiff was the owner of item Nos.1 and 2 of the plaint schedule property. In order to come to the said conclusion, the lower appellate Court relied on the admission made by the first defendant, donor, in his written statement. Thus, it was held that the gift

deeds, Exs.A.1 and A.2 were not disputed but the dispute is only with regard to Exs.A.3 and A.4. He held that by execution of cancellation deed, Ex.A.3, execution of gift deeds, Exs.A.1 and A.2 were proved and in the absence of any condition in Exs.A.1 and A.2, they cannot be cancelled in view of Section 129 of Transfer of Property Act. The lower appellate Court also observed that when the defendants 2 and 4 took a specific plea with regard to cancellation of earlier gift deeds under Ex.A.3, execution of gift deed under Ex.A.4, they did not come to the witness box and established their case. The lower appellate Court further held that a registered document can be cancelled only by resorting to the remedy of civil suit and no unilateral cancellation can be made. Challenging the same, the present second appeal is filed by the second defendant.

As stated above, the second defendant, except filing the written statement, did not enter the witness box and proved his case. The fifth defendant was examined as D.W.1. As rightly pointed out by lower appellate Court, the admission made in the written statement of the deceased first defendant is a clear proof of execution of Exs.A.1 and A.2 in favour of the plaintiff and the said observation that the execution of cancellation deed under Ex.A.3 also proves the execution of Exs.A.1 and A.2 is correct. The finding recorded by the lower appellate Court that registered documents cannot be cancelled unilaterally is also correct. In view of the findings recorded by the lower appellate Court, with which this Court is in concurrence, this Court sees no grounds to interfere with the Judgment and decree passed by the lower appellate Court.

The second appeal is accordingly dismissed at the admission stage. Miscellaneous petitions, if any in the second appeal, shall stand closed.

A.RAMALINGESWARA RAO, J

23.06.2017
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