

***THE HONOURABLE SRI JUSTICE A.V.SESHA SAI**

+APPEAL SUIT No.275 of 1998

% 27.12.2017

Gandla Saradamma, w/o.Narasappa, 62 years and others.

..appellants/D1 to D4.

AND

Galda Ramaiah (died) rep. by LR.R4 and R5 and others.

.. respondents.

!Counsel for appellants: Sri V.L.N.G.K.Murthy for Sri V.L.Surendra
Counsel for Respondents: Sri K. Sitaram.

<Gist :

>Head Note:

? Cases referred:

-nil-



THE HON'BLE SRI JUSTICE A.V.SESHA SAI**APPEAL SUIT No.275 of 1998****JUDGMENT**

Defendants 1 to 4, in O.S.No.101 of 1995 on the file of the Court of the Principal Senior Civil Judge, Kurnool, are the appellants in the present appeal suit, preferred under Section 96 of Code of Civil Procedure, 1908 (for short 'the Code').

2. The first respondent herein instituted O.S.No.101 of 1995 for the following reliefs:

- (i) for declaration of title for plaint schedule property and for vacant possession of the same after duly evicting defendants therefrom;
- (ii) for past mesne profits, for the last three years;
- (iii) for future mesne profits;
- (iv) for costs of the suit;
- (v) and such other relief as the Honourable Court may deem fit and proper in the circumstances of the case.

3. The following are the particulars of the schedule of properties of the present suit:

"1. House bearing D.No.9/60A in Kurnool consisting of godown, open space, a room and latrine, facing east with all easementary right mentioned in sale deed dated 03.07.1967.

Boundaries:

East: Rastha and house of Pinjari Faqrudin.
West: House of Gandla Pullaiah
North: Road and item No.2
South: House of Abdul Mazeed.

Measurements:

East-west:18.9 feet = 5.7150 metres.
North-South:77.9 feet = 23.6982 metres
Value Rs.40,000-00

2. House bearing D.No.9/60-B in Kurnool facing east, with all easementary right mentioned in document dated 05.06.1967.

Boundaries:

East: Rastha
West: House of Gandla Pullaiah
North: Godown of Segu Bala Nagaiah
South: Rastha and item No.1 of plaint schedule.

Measurements:

East-West: 13.3 feet = 4.0387 metres.
North-South on east 50.06 feet = 15.3924 metres.
on west 49 feet = 14.9352 metres
Value: Rs.80,000.00.

4. Defendants 1 to 4 filed written statement, resisting the plaint pleadings. The learned Senior Civil Judge, on the basis of the pleadings, framed the following issues for trial:

"1. Whether S. Narasappa is not a J.Dr., in E.P.No.139/54 in S.C.No.768 of 1953 nor husband of first defendant nor father of defendants 2 to 4?

2. Whether G. Nagamma gifted the plaint schedule property to Narasappa and that the Sankaraiah is the son of Narasappa and he questioned the validity of the said sale?

3 Whether Sankaraiah got 9/60-A item No.1 of plant schedule for his share and in turn he sold the same to the plaintiff under registered sale deed dated 03.07.1967?

4. Whether D1 to D4 had no other house to shift their residence after purchase of the plaint schedule items?

5. Whether the plaint schedule property fell to the share of second plaintiff in the division during partition of the year 1970 and that D1 to D4 were paying rent to the second plaintiff?

6. Whether 5th defendant is a fictitious person?

7. Whether there is no cause of action for the suit?

8. Whether Court fee is incorrect?

9. Whether mesne profits (a) and (j) as valued is too excessive and too exaggerated?

10. To what relief?

5. During the course of trial, in order to substantiate his case, the plaintiff, apart from examining himself as P.W.1, also examined one Sri N. Lakshmaiah as P.W.2 and exhibited Exs.A1 to A27. On the other hand, on behalf of the defendants, defendant No.1 was examined as D.W.1 and Exs.B1 to B8 were marked.

6. Learned Senior Civil Judge, by way of impugned judgment and decree dated 29.01.1998, decreed the suit. This appeal assails the said judgment and decree.

7. Heard Sri V.L.N.G.K. Murthy, learned senior counsel, representing Sri V.L.Surendra, learned counsel on record for the defendants/appellants and Sri K. Sitaram, learned counsel for respondents, apart from perusing the material available before this Court.

8. Submissions/contentions of the learned senior counsel on behalf of the appellants:

(1) The judgment rendered by the learned Senior Civil Judge is contrary to law, weight of evidence and probabilities of the case.

(2) The learned Senior Civil Judge erred in holding that respondents 1 and 2 became absolute owners of the plaint schedule property.

(3). The learned Senior Civil Judge ought to have held that the appellants 1 and 2 are the owners in view of Ex.B8 gift deed dated 03.02.1954 executed by Sri Narasappa (husband of first defendant) in favour of defendants 1 and 2, appellants 1 and 2 herein.

(4). The Court below grossly erred in holding that Ex.B8 gift deed dated 03.02.1954 was executed after the Court sale dated 18.10.1954.

(5) The case of the plaintiffs that Sri Narasappa and appellants have been residing in suit house on rental basis is baseless and the Court below ought to have seen that Ex.A25 rental agreement between P.W.1 and Narasappa dated 05.06.1967 is inadmissible and hit by Section 35 of the Indian Stamp Act and under Section 17 of the Registration Act.

9. Submissions/contentions of the learned counsel for the respondents:

(1) There is no error nor there exists any infirmity in the impugned judgment, as such, no interference of this Court under Section 96 of the Code is warranted.

(2) In the pleadings, nowhere the defendants pleaded about the execution of Ex.B8 gift deed dated 03.02.1954 and for the first time, the first defendant as D.W.1 stated in her evidence about the same, as such, Ex.B8 cannot be given any credence or weight in the absence of any pleadings.

(3). Ex.A8 decree passed in O.S.No.70 of 1957 on the file of the District Munsif, Kurnool, wherein the defendants agitated about their title, but the Court rejected the same, operates as *res judicata*.

(4) The case of the defendants is also hit by order 2 Rule 2 of the Code of Civil Procedure.

10. In the light of the pleadings and contentions, advanced supra, the points that arise for consideration of this Court under Section 96 of the Code are as follows:

(1) Whether the Court below is correct in holding that Ex.B8 gift deed dated 03.02.1954 was executed by Sri Narasappa in favour of his wife

and son i.e., defendants 1 and 2, after the Court auction in Small Cause Suit No.768 of 1953 on the file of District Munsif, Kurnool ?

(2) Whether the contention that since there is no pleading in the written statement about Ex.B8 gift deed, the defendants cannot rely on the same is sustainable and tenable?

(3) Whether Ex.A8 decree passed in O.S.No.70 of 1957 on the file of District Munsif, Kurnool, operates as *res judicata* under Section 11 of the Code ?

(4) Whether the case of the defendants is liable to be rejected in view of the provisions of Order 2 Rule 2 of the Code ?

(5) Whether the appellants are entitled for any relief under Section 96 of the Code ?

11. For the sake of brevity and convenience, this Court deems it appropriate to refer the parties as arrayed before the trial Court.

12. **Point No.1:**

The case of the plaintiffs is that they are the father and son and the plaint schedule property fell to the share of the second plaintiff in the partition between them. Originally, the suit schedule property was owned by one Smt G. Nagamma, who by way of Ex.A3 gift deed dated 10.02.1952, gifted the same to her nephew, one Sri Narasappa, and the son of Narasappa, through his first wife, one Sri G. Shankaraiah. The said property was brought to sale in E.P.No.139 of 1954 in Small Cause Suit No.768 of 1953, wherein Sri Narsappa was shown as Judgment Debtor. In the auction sale held in the said E.P., one Sri Segu Bala Nagaiah became successful auction purchaser and he was resisted by Sri Sankaraiah, s/o. Narasappa, through the first

wife. Thereafter, Sri Segu Bala Nagaiah filed O.S.No.65 of 1956 before the Court of the District Munsif, Kurnool, for partition, against Sri Sankaraiah, s/o. Narasappa. The said suit was decreed, directing partition and Sankaraiah got item No.1 and Sri Segu Bala Nagaiah got item No.2 of the plaint schedule properties. Thereafter, plaintiff No.1 purchased the said properties by way of Exs.A1 and A2, registered sale deeds, dated 05.06.1967 and 03.07.1967, respectively.

13. Defendant No.1, acting as guardian of defendants 2 and 3 herein, filed O.S.No.70 of 1957, questioning the auction sale in Small Cause Suit No.768 of 1953 and by way of Ex.A8 dated 24.01.1959, the same was dismissed.

14. Plaintiff No.2 in the suit filed R.C.C.No.38 of 1990 on the file of Principal District Munsif-cum-Rent Controller, Kurnool, under Section 10(2)(i), 10(2)(ii)(a) and 13 of A.P. Buildings (Lease, Rent and Eviction) Control Act, against the first defendant for eviction, alleging willful default. In the said R.C.C., the first defendant herein denied title of plaintiff No.2. By way of Ex.A10, the said R.C.C. was dismissed. The said order was assailed in C.M.A.No.1 of 1993 before the Court of the Principal Subordinate Judge, Kurnool. By way of Exs.A11 and A12, the said C.M.A. was dismissed on 09.12.1994, directing the second plaintiff in the present suit to file a civil suit. A perusal of Ex.A11 shows that the first defendant herein denied the title of the second plaintiff and the Rent Controller found that the denial of title is bonafide and plaintiff No.2 failed to prove the relationship of landlord and tenant. Thereafter, plaintiffs 1 and 2 herein filed the present suit in O.S.No.101 of 1995 for declaration of title, possession and for profits.

15. A perusal of the impugned judgment shows that the learned Judge observed at paragraph No.7 of the impugned judgment, while answering issues 2 and 3, that original of Ex.B8 gift deed was executed in favour of D.W.1 after issuance of sale certificate in favour of Sri Segu Bala Nagaiah and so, the husband of D.W.1 ceased to have his right to execute Ex.B8, as such, Ex.B8 became infructuous and so, the plaintiff became absolute owner under Exs.A1 and A2 registered sale deeds. According to the learned senior counsel appearing for the appellants herein, the said finding is erroneous and contrary to the information available on record and that the said erroneous finding tilted the entire decision. It is the further submission of the learned senior counsel for the appellants that the date of execution of Ex.B8 gift deed dated 03.02.1954 was prior to the date of attachment of the property, date of auction and date of confirmation of sale in Small Cause Suit No.768 of 1953 and that the finding recorded contra by the learned Senior Civil Judge is erroneous. Therefore, this aspect needs to be verified and examined on the basis of the evidence available on record. In order to demonstrate the said aspect, the attention of this Court is invited to Ex.A4 sale certificate dated 15.04.1953 issued in Small Cause Suit No.768 of 1953. A perusal of the said document, in clear and vivid terms, discloses that the auction was conducted on 18.10.1954 and the sale was confirmed on 19.01.1955. It is also not in dispute that the property was attached in Small Cause Suit No.768 of 1953 on 23.02.1954. Therefore, the finding recorded by the learned Senior Civil Judge that the above events took place prior to Ex.B8 gift deed dated 03.02.1954, as such, the said gift

deed became infructuous, which tilted the decision in this case, is neither sustainable nor tenable. Therefore, point No.1 is answered in favour of the appellants.

16. **Point No.2:**

It is the submission of the learned counsel for the respondents that in the absence of any pleading about Ex.B8 gift deed, for the first time, the same cannot be pressed into service by the defendants in evidence. The said submission is strongly opposed by the learned senior counsel by relying upon the decision of the Apex Court in **Ram Sarup Gupta (dead) by L.Rs. V. Bishun Narain Inter College and others**¹, wherein it was held in paragraph Nos. 6 and 7 as follows:

“The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by [Section 60\(b\)](#) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they

¹ (1987) 2 SCC 555

proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal. [In Bhagwati Prasad v. Shri Chandramaul](#), [1956] 1 SCR 286 a Constitution Bench of this Court considering this question observed:

"If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."

Before we examine the pleas raised by the defendants in their written statement it is necessary to keep in mind that the plaintiff himself stated in paragraph 4 of the plaint that the property in dispute has been in occupation of the school as licensee under the permission of Raja Ram Kumar Bhargava erstwhile owner of the property. Defendant Nos. 11 to 17 in paragraph 10 to 16 of their written statement while dealing with the question of license expressly stated that the school had made pucca constructions and had been making various substantial additions and alterations in the building without any objection. Raja Ram Kumar Bhargava had given away the premises in dispute permanently to the school and they have been in occupation of the premises for the last 20 years and during that period they have been making substantial additions and alterations in the building including replastering, re-flooring etc. by incurring heavy expenses. In paragraph 18 of their written statement they pleaded that the license was coupled with a grant and in any case it was a permanent and irrevocable license in favour of the school and the same could not be revoked by the plaintiff. The pleadings so raised make it apparently clear that the defendants had raised a specific plea that the license was coupled with grant, it was a permanent and irrevocable license and in pursuance of the licence the licensee had carried out work of permanent character incurring expenses for the advancement of the purpose for which the license had been granted. In fact, issue numbers 4, 5 and 6 framed by the trial court relate to the question whether license was irrevocable. The issues so framed involved the question of irrevocability of the license under both the clauses (a) and (b) of the [Section 60](#) of the Act. The plaintiff went to trial knowing fully well that

defendants claim was that the license was irrevocable, on the ground that they had made permanent constructions and incurred expenses in pursuance of the license granted for the purpose of school. The plaintiff knew the case he had to meet, and for that purpose he produced Raja Ram Kumar Bhargava in evidence in support his plea that the license was a simple license and it was not irrevocable as pleaded by the defendants. This question has been considered in great detail by T.S. Misra, J. and we are in agreement with the view taken by him.

17. In fact, in paragraph No.7 of the written statement filed in the present suit, the defendants stated about the title of the first defendant to the schedule property and in order to prove the same, defendants filed Ex.B-8 gift deed. It is also significant to note that in R.C.C.No.38 of 1990 also, this document was marked as Ex.B1 on behalf of the defendants herein and the Rent Controller has elaborately considered the same and found that the claim of the first defendant cannot be found to be not bonafide. The said finding was also confirmed in C.M.A.No.1 of 1993. Therefore, the existence of Ex.B8 document is not a surprise for the plaintiffs in the present case. Therefore, this point also needs to be answered in favour of the appellants.

18. **Point No.3:**

Coming to the aspect of *res judicata*, raised by the learned counsel for the respondents, it is required to be noted that in fact, the plaintiffs in their plaint categorically pleaded that the judgment in Small Cause Suit No.768 of 1953 would operate as *res judicata*, but no issue touching the said aspect was neither framed nor the said aspect was discussed.

19. **Point No.4:**

Coming to the aspect of impact of Order 2 Rule 2 of the Code, it is the submission of the learned counsel for the respondents that since the first defendant in her earlier suit did not raise the aspect touching Ex.B8, it is not open to press the same into service. Resisting the said plea, it is contended by the learned senior counsel that the said provision has no relevance as the same deals with reliefs, but not the pleadings. In fact, no issue was framed and no finding was recorded.

20. **Point No.5:**

In the result, the appeal suit is allowed, setting aside the judgment and decree dated 29.01.1998 in O.S.No.101 of 1995 on the file of the Principal Senior Civil Judge, Kurnool, and the matter is remanded to the trial Court to consider the following additional issues along with other issues in the said suit, after giving opportunity to all the stake holders for adducing evidence:

(1) Whether Ex.B8 has any impact on the suit claim and whether the suit can be decreed in view of the said document ?

(2) Whether Ex.A8 operates as *res judicata* against the defendants?

3. Whether the claim of the defendants is barred under Order 2 Rule 2 of the Code in view of the earlier suit in O.S.No.70 of 1957 ?

21. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE A.V.SESHA SAI

27th December, 2017

Note:
LR copy be marked.
SJ