

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.241 OF 2013

JUDGMENT:

This Second Appeal is filed by defendant Nos.3 and 4 assailing the decree and judgment dated 16.11.2012 in A.S.No.8 of 2011 on the file of the Court of the Senior Civil Judge, Repalle, wherein and whereby the decree and judgment dated 07.03.2011 in O.S.No.197 of 2008 on the file of the Court of the Principal Junior Civil Judge, Repalle, granting the perpetual injunction in favour of the plaintiff was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: The plaintiff and mother of the defendants by name Rama Tulasamma are own sisters and daughters of Kancherlapalli Venkata Subbaiah and Veera Raghavamma. Kancherlapalli Venkata Subbaiah acquired an extent of Ac.0.64 cents of house site including the suit schedule property situated at Uppudi Road of Repalle Municipal limits. In the year 1975, Venkata Subbaiah died intestate leaving behind his wife Veera Raghavamma, his daughters Chintala Rama Tulasamma and Chintala Padvamavathi (plaintiff) as his legal heirs. After the death of Venkata Subbaiah, his wife and two daughters have partitioned the said Ac.0.64 cents of house site into three equal shares. One Chintala Venkateswarlu married Rama Tulasamma as his first wife and Padvamavathi (plaintiff) as his second wife. The said Venkateswarlu worked as Section Officer in P.W. Department and died in the year 1984.

During lifetime, the said Venkateswarlu purchased huge properties in the name of Rama Tulasamma and she is also getting pension. The plaintiff's mother Veera Raghavamma executed a gift deed in favour of Chintala Rama Tulasamma on 04.10.1982 bequeathing the suit schedule property. Chintala Rama Tulasamma executed a gift deed in favour of the plaintiff on 26.10.2007 bequeathing the suit schedule property. The plaintiff became absolute owner of the suit schedule property by virtue of the gift deed dated 26.10.2007. The defendants, who are the sons of Rama Tulasamma, are interfering with the suit schedule property without any right whatsoever. Having no other alternative, the plaintiff approached the Court seeking the relief of perpetual injunction.

4. Defendant Nos.1 and 2 remained *ex parte*. Defendant Nos.3 and 4 filed written statement denying all the averments made in the plaint *inter alia* contending that the plaintiff is not the wife of their father Venkateswarlu. It is further contended that Rama Tulasamma did not execute gift deed dated 26.10.2007 in favour of the plaintiff. Defendant Nos.1 and 2 are suffering with Schizophrenia from long time; therefore, the suit is not maintainable against them in view of Order XXXII of C.P.C. Rama Tulasamma on coming to know the fraud played by the plaintiff in obtaining the gift deed dated 26.10.2007 executed a settlement deed in favour of the defendants on 16.02.2008. Hence, the suit is liable to be dismissed.

5. Basing on the above pleadings, the trial Court framed the following issues:

- i) Whether the plaintiff is entitled for the permanent injunction as prayed for?

ii) To what relief?

6. Before the trial Court, on behalf of the plaintiff, PWs.1 to 6 were examined and Exs.A.1 to A.17 were marked. On behalf of the defendants, DW.1 was examined and Exs.B.1 to B.4 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff has been in possession of the suit schedule property much less as on the date of filing of the suit and consequently, granted perpetual injunction in her favour. Feeling aggrieved by the decree and judgment dated 07.03.2011 in O.S.No.197 of 2008, defendant Nos.3 and 4 have preferred A.S.No.8 of 2011 on the file of the Court of the Senior Civil Judge, Repalle. The first appellate Court, after reappraising the oral and documentary evidence available on record afresh, arrived at a conclusion that the plaintiff was in possession of the property as on the date of filing of the suit and dismissed the appeal. Hence, the second appeal.

8. Learned counsel for defendant Nos.3 and 4 (appellants herein) strenuously submitted that the Courts below granted perpetual injunction in favour of the plaintiff basing on Ex.A.4 gift deed, which is not legally enforceable. He further submitted that Rama Tulasamma did not execute gift deed in favour of the plaintiff on 26.10.2007. He also submitted that the findings recorded by the Courts below are perverse and hence, liable to be set aside.

9. *Per contra*, learned counsel for the plaintiff (first respondent herein) submitted that this Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below. He

further submitted that there is no question of law much less substantial question of law is involved in this appeal. Hence, the appeal is liable to be dismissed.

10. Basing on the submissions made by the learned counsel for both parties, the question of law that arises for consideration in this second appeal is as follows:

Whether Ex.A.4 gift deed dated 26.10.2007 alleged to have been executed by Rama Tulasamma in favour of the plaintiff is legally enforceable?

11. To substantiate the arguments, learned counsel for the first respondent/plaintiff has drawn the attention of this Court to the decision in **Krishna Ram Mahale (Dead), by his LRs. v. Mrs. Shobha Venkat Rao**¹, wherein the relevant portion of paragraph No.8, which reads as follows:

“.....It is a well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in *Lallu Yeshwant Singh v. Rao Jagdish Singh* (AIR 1968 SC 620). This Court in that judgment cited with approval the well known passage from the leading Privy Council case of *Midnapur Zamindary Company Limited v. Naresh Narayan Roy* (AIR 1924 PC 144) where it has been observed (p.208):

“In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a court.”

12. The following admitted facts can be culled out from the pleadings of both parties: One Kancherlapalli Venkata Subbaiah

¹ (1989) 4 SCC 131

acquired an extent of Ac.0.64 cents of house site in 10th ward, 13th Block of Repalle Municipality, which includes the suit schedule property. The said Venkata Subbaiah died intestate in the year 1975 leaving behind his wife, Veera Raghavamma, and his two daughters by names Rama Tulasamma and Padmavathi (plaintiff) as his legal heirs. After the death of Venkata Subbaiah, his wife and two daughters have partitioned Ac.0.64 cents into three equal shares wherein Raghavamma and plaintiff got Ac.0.21 cents each. Veera Raghavamma executed Ex.A.3 gift deed dated 04.10.1982 in favour of Rama Tulasamma bequeathing the suit schedule property. Raghavamma is no more.

13. The case of the plaintiff is that Rama Tulasamma, who is the mother of defendant Nos.1 to 4, executed Ex.A.4 gift deed on 26.10.2007 in her favour bequeathing the suit schedule property. The contention of defendant Nos.3 and 4 is that their mother Rama Tulasamma did not execute gift deed in favour of the plaintiff on 26.10.2007. It is their further contention that Rama Tulasamma executed a settlement deed on 16.02.2008 bequeathing the suit schedule property in favour of her children. It is a settled principle of law that in a suit for perpetual injunction, the Court cannot decide the title of the parties. However, the Court can incidentally consider the title of the parties. In the instant case, the entire controversy revolves around Ex.A.4 gift deed. PW.2 is the scribe and PW.3 is the attester of Ex.A.4 gift deed. The Courts below believed the testimony of PWs.2 and 3 so far as execution of Ex.A.4 gift deed by Rama Tulasamma in favour of the plaintiff is concerned. Defendant Nos.3 and 4 have taken a specific plea that the plaintiff played fraud and obtained Ex.A.4 gift deed from their

mother Rama Tulasamma. Rama Tulasamma is the competent person to say whether she executed Ex.A.4 gift deed in favour of the plaintiff. Once the execution of document is proved by the plaintiff, then the onus of proof shifts on the defendant. For one reason or other, the defendants did not choose to examine Rama Tulasamma. The recitals of Ex.A.4 reveal that Rama Tulasamma put the plaintiff in possession of the suit schedule property. Unless and until a contrary is proved, the Court can place reliance on a registered document. The oral testimony of PWs.2 to 6 clearly reveals that the plaintiff was in possession of the suit schedule property. A perusal of Exs.A.1, A.2 and A.5 to A.17 clearly reveals that the plaintiff has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. The oral and documentary evidence produced by the plaintiff clinchingly establishes that she was in possession of the property as on the date of filing of the suit. The Courts below rightly considered the recitals of Ex.A.4 gift deed and decreed the suit. The first appellate Court is the fact finding final Court. The findings recorded by the Courts below are supported by oral and documentary evidence. Therefore, I am unable to accede to the contention of the learned counsel for the appellants that the findings recorded by the Courts below are perverse.

14. In **Municipal Committee, Hoshiarpur v. Punjab SEB**², while dealing with the scope of Section 100 of C.P.C., the Hon'ble apex Court held at paragraph No.16 as follows:

16. ... A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial

² (2010) 13 SCC 216

question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC.

15. Having regard to the facts and circumstances of the case and also the principles enunciated in the case cited supra, I am of the considered view that the question of law raised by the appellants will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law is involved in this appeal.

16. In the result, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 10.11.2017
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