

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

A.S.No.954 of 2016

JUDGMENT:

The learned counsel appearing for the appellants and the respondents submitted that the issue involved in the miscellaneous petition and the appeal is one and the same and hence requested to hear and dispose of the main appeal. Accordingly, the appeal is taken up for hearing and heard the arguments on either side.

2. The appellants herein and three others, viz., respondents Nos.11 to 13 filed E.A.No.10 of 2015 under Order 21 Rules 97 to 102 r/w 151 CPC in E.P.No.100 of 2014 on the file of the II Additional District Judge, Ranga Reddy District at L.B.Nagar claiming right and title over the E.P.schedule property.

3. Respondents Nos.1 to 4 are the decree-holders/plaintiffs. R.5 is the 5th defendant in the suit and J.Dr., in the Execution Petition. The 5th respondent/J.Dr was killed on 30.09.2013 and his legal representatives have come on record and they are R.6 to R.10.

4. The claim petitioners are claiming rights over 400 Sq.Yds. in 'A' schedule, 477.77 Sq.Yds., in 'B' schedule and 1222 Sq.Yds., in 'C' schedule. They are different plot numbers in Sy.No.200 situated at Sri Ram Nagar, Kondapur village, Serilingampally.

5. Respondents No.1 to 4 herein filed O.S.No.980 of 2012 on the file of the II-Additional District Judge, Ranga Reddy at L.B.Nagar, against the 5th respondent for specific performance of agreement of sale dated 04.12.2000 in respect of the property which comprises of plot Nos.213, 214, 215, 216, 217, 228, 229, 230, 231 and 232 in all admeasuring 2000 Sq.Yds., in Sy.No.200. The 5th respondent remained *ex parte* and the suit came to be

decreed on 06.08.2013. As already noticed, within less than two months thereafter i.e., on 30.09.2013 the 5th respondent is alleged to have been murdered. The legal heirs of the deceased-5th respondent though made an attempt to get the decree *set aside* did not pursue it to its logical end. Respondents No.1 to 4 filed E.P.No.100 of 2014 seeking execution of the registered sale deed and also deposited the balance sale consideration. The Execution Petition was ordered on 12.11.2014. During the pendency of the said Execution Petition, respondents No.11 and 12 filed E.A.No.10 of 2015. Respondent Nos.11 died and the two appellants and respondent No.13 came on record as legal representatives of Respondent No.11/Claimant No.1.

6. The appellants and respondents Nos.11 to 13 filed E.A.No.10/2015 claiming that they are the real owners of the subject property and they are in physical possession and enjoyment of the property. They claim that originally the properties belonged to the 5th respondent-Jawed Ahmed who purchased the same under agreement of sale, dated 05.01.1986 and the agreement got adjudicated before the District Registrar on 03.04.1996. They further claim that some part of the property was purchased by Md.Abdul Sukub under agreement of sale dated 05.01.1986. Jawed Ahmed and Md.Abdul Sakub are son and father. Md.Abdul Sakub alleged to have executed a Hiba in favour of Jawed Ahmed. The children of the 11th respondent purchased the property from Jawed Ahmed under agreement of sale, consideration was paid and they were put in possession of the property. When Jawed Ahmed tried to interfere with their possession, the claimants filed O.S.No.128/2013 on the file of the Additional Junior Civil Judge, Kukatpally for injunction. The said suit is dismissed on 30.03.2016. The following point for consideration was determined by the trial Court:

“Whether the petitioners/claimants are entitled to claim the property by obstructing the execution of the decree by filing petition under Order 21, Rule 97 CPC?”

7. The claimants filed 39 documents, viz., gift deeds, agreements of sale etc., to establish their claim. On behalf of decree holders Exs.B1 to B11 are marked. For the claimants, PWs 1 & 2 and on behalf of Respondents Nos.1 to 4, RW 1 is examined.

8. The Court below having considered the oral and documentary evidence adduced on either side and after elaborately discussing the rival claims of the parties over the subject property, dismissed the claim petition of the claimants, observing that the agreement of sale did not convey any title to the property and there is no proof of execution of sale deed by Mr.Jawed Ahmed in favour of claimants, that there is no proof to establish that the claimants are in possession of the schedule property, and that the claimants cannot transfer or alienate the property to any other person basing on agreement of sale and the transferee cannot get better title.

9. Questioning the order of the court below, claimants Nos.3 & 4 only filed this appeal.

10. Learned Counsel appearing for the appellants/claim petitioners submits that the learned District Judge erred in dismissing the claim petition and failed to take into consideration various documents that were filed. It is further submitted that even though there is voluminous evidence that the appellants are in possession of the schedule properties, the Court below did not consider the same in proper perspective. It is further submitted that the claim petition as is well known was required to be tried as an independent suit by framing proper issues but the Court has not even properly framed the

issue so as to determine the controversy as to whether the claim petitioners have any rights over the schedule property.

11. On the other hand, learned Counsel appearing for respondents No.1 to 4 submits that the claim petitioners have absolutely no semblance of title over the property and the Court below has properly appreciated the evidence on record and dismissed the claim petition. It is further submitted that originally there were five claim petitioners and they are members of the same family namely while claim petitioners 1 and 5 are the parents, claimant No.2 was their son and claimants No.3 and 4 are their daughters. The first claimant died and out of the four claimants, the brother/claimant No.2 and mother/claimant No.5 did not prefer any appeal. The appeal is filed only by claimants No.3 and 4, who are sisters. Learned Counsel further submits that even if it is taken on its face though not admitted that the claim petitioners have acquired title over the schedule properties from Jawed Ahmed, even according to them is only said to be an agreement of sale and even though the said agreement of sale is said to be of the year 2002, till the present claim petition filed in the year 2014, either during the life time of Jawed Ahmed or subsequently thereto, the claim petitioners have taken no steps whatsoever to perfect their title by virtue of either obtaining a sale deed from the vendor or by approaching the competent Court of law for the relief of specific performance of the contract. Learned Counsel further submits that even during the life time of Jawed Ahmed, Respondents Nos.11 and 12, the original claim petitioners filed O.S.No.128 of 2013 on the file of the Additional Junior Civil Judge, Kukatpally at Miyapur against him but even that suit is only for injunction simplicitor and even in that suit, Jawed Ahmed has vehemently denied having entered into any agreement of sale with the deceased/claimant or anybody else, even though the said suit was dismissed

on 30.03.2016, but falsely averred as if it is pending. Jawed Ahmed even denied acquaintance with any of the claim petitioners. It is further submitted that at the time when the agreement of sale is said to have been executed by Jawed Ahmed, he was not even resident of India and as a matter of fact, he was residing in USA. Learned Counsel further submits that respondents No.1 to 4/plaintiffs who filed the suit for specific performance have obtained the decree and fulfilled their obligation, the claim petitioners without any semblance of right have filed the claim petition, which was rightly dismissed. It is also submitted that before filing the present claim petition, the claim petitioners filed E.A. (SR) No.3763 of 2013 under Order 21 Rule 58 C.P.C. in the same Court and the learned II-Additional District Judge vide Orders dated 17.09.2014 dismissed the said claim petition as not being maintainable since there is no attachment of any property by the decree-holder.

12. In view of the above submissions, the point that arises for consideration is as to whether the claim petitioners have established their title over the schedule properties so as to succeed in their claim petition or whether the order of the learned II-Additional District Judge dismissing the claim petition is sustainable warranting no interference whatsoever?

13. The two claim petitioners are the sisters of respondent No.12 and they claim to have purchased the suit schedule plots from one Jawed Ahmed under an agreement of sale-Ex.A.37. Admittedly, it is an unregistered agreement of sale. No steps were taken whatsoever for getting the sale deed in favour of the two appellants. Being agreement-holders they do not derive the absolute rights and title over the suit schedule plots. However, curiously the two sisters viz., the claim petitioners have executed – Ex.A.3 a registered gift deed on 04.10.2008 in favour of their brother who was originally the claim petitioner No.1 and presently the respondent No.11. On

the very same day, the brother/claim petitioner No.2 has executed another registered gift deed in favour of the father/claim petitioner No.1, who subsequently died.

14. Further more, what is noticed from the gift deeds is that they do not trace their title insofar as the suit schedule plots are concerned. They do not even refer that they became the owners of the suit schedule plots pursuant to the agreement of sale in between them and Jawed Ahmed. Without they themselves having a valid title, they executed the gift deeds and now the gift deeds – Exs.A.1 to A.3 are made the basis for claiming that they are the owners of the suit schedule plots. The rest of the documentary evidence has no relevance insofar as the title of the claim petitioners is concerned. In order to succeed in a claim petition, the petitioners should establish that they have title over the schedule property better than the decreeholders who filed the execution petition in pursuance to the decree which they obtained against Jawed Ahmed in the original suit bearing O.S.No.980 of 2012. The learned Executing Court has considered each and every document minutely and held that the claim petitioners could not establish their claim over the schedule property so as to succeed in obstructing the execution of the decree which has been obtained by the decree-holders against the judgment-debtor/Jawed Ahmed, the original owner, from whom the claim petitioners claim to have derived the title under an unregistered agreement of sale which remained as such till date. The registered instruments are executed without proper authority and competence for the reason that the executants themselves have not become the absolute owners of the schedule property so as to gift the same to others. Apparently, the gift deeds are brought into existence on the same day, firstly by the two sisters in favour of the brother and in turn the brother

gifting the property to their father. All these documents are apparently created to create a semblance of title over the schedule property. However, the foundation is lacking. The donors did not become the owners of the property which is required to be done either by execution of a registered sale deed or by following the procedure for obtaining the specific performance of the so-called agreement of sale. Merely by possessing an agreement of sale, the executants of the gift deed cannot be said to derive valid title, and as is well settled, no title can be transferred by executants when they themselves do not possess and they cannot convey better title to others more than what they have. Even if the agreement of sale, though inadmissible in evidence, is presumed to be true, that will not cloth the executants of the gift deeds to transfer the said property by way of registered instruments. Therefore, the gift deeds – Exs.A1 to A.3 are manifestly a sham and nominal documents they having been executed by the persons who themselves do not possess valid title over the property which has been gifted.

15. Along with the appeal, the appellants filed ASMP No.2217/2016 for staying all further proceedings in E.P.No.100/2014 pending disposal of the appeal. In support of the application, claimant No.3 filed an affidavit wherein it is stated that the appellants/sisters being the daughters of claimant No.1/Respondent No.11 are entitled to equal shares along with their brother and mother/Respondents Nos.12 and 13. It is also pertinent to mention that in the said affidavit it is stated that during pendency of the claim petition due to certain reasons, differences arose between them and their brother and mother, that their mother/respondent No.13 won over their brother, took him on her side, and two suits viz., O.S.No.679/2015 on the file of the 1st Additional District Judge, Ranga Reddy District and O.S.No.619/2015 on the

file of the XIII Additional District Judge, Ranga Reddy District are pending between them.

16. It is apparent from the above that the appellants/claimants are not claiming any exclusive rights over the suit schedule plots which are numbering 10, each admeasuring 200 sq.yards. Their claim appears to be only for an extent of 1/5th each of their share out of 877 sq.yards belonging to their father. During pendency of the claim petition, after the death of their father, it appears that in between families two civil suits are filed and pending in respect of the properties. The suit schedule property comprises of 10 plots, which plot being claimed by the appellants has not been determined. Even if their claim is proved out of 877 sq.yards, they may approximately get 200 sq.yards. Since their brother and mother are not sailing with the appellants, the appellants cannot claim that the decree in favour of Respondents Nos.1 to 4 who have filed O.S.No.980/2012 for 2000 sq.yards cannot be executed.

17. The learned counsel appearing for the appellants vehemently argued that on behalf of the respondents/plaintiffs RW 1 is examined, claiming himself to be GPA and incidentally he is also Advocate on record for respondents/plaintiffs, who has even cross examined PW 1. Even if the evidence of RW 1 is eschewed from consideration, the appellants/plaintiffs who are required to prove their case conclusively have failed to do so and therefore, this contention of the learned counsel for the appellants need not detain us longer.

18. The other objection of the learned counsel for the appellants is that the learned District Judge who is required to try the claim petition as if a regular suit has not even framed proper issues and only by framing a point for consideration, proceeded to dispose of the claim petition.

19. No doubt the claim petition is required to be tried as a suit and issues need to be framed and answered. Non-framing of issues or defects in the issues cannot be a ground for setting aside the judgment as such. Though issues are not specifically framed, but perusal of the impugned judgment of the learned District Judge reveals that he has adverted to the controversy in right perspective and considered the oral and documentary evidence available on record. Therefore, the judgment is not liable to be set aside on the ground that no issues are framed as required.

20. The documents that are relied upon by the claimants which according to them relevant are three gift settlement deeds executed on 04.10.2008. Under Ex.A8, both the appellants/sisters have gifted their plots in respect of their brother/Respondent No.12 in all admeasuring about 600 sq.yards. After the gift settlement deeds, on or after 04.10.2008 the appellants do not have any plots of their own in suit Sy.No.200. On the same day i.e. on 04.10.2008 their brother/claimant No.2/Respondent No.12 executed another gift deed in favour of their father claimant No.1/respondent No.11 in respect of plot No.217. Under Ex.A10, their brother and father applied to the competent authorities for regularization of their plots. Subsequently, it appears that their brother and father, filed W.P.No.33227/2011 seeking a direction for regularization of plots and not to interfere with the construction made by their father and brother, if the same is made in accordance with the plan by the Gram Panchayat. Reliance is also placed upon Ex.A15 which is a gift settlement deed dated 25.02.2013, executed by their brother/claimant No.2/respondent No.12 in favour of their father in respect of some of plots. Similarly, on the same day, their brother executed another gift settlement deed in favour of their father in respect of other plots.

21. From the above documents, what is apparent is that the claimants themselves who have purchased the suit schedule plots from the Jaweed Ahmed/respondent No.5 under agreement of sale in the year 2002, exchanged their plots between their brother and father under registered instruments dated 04.10.2008 by executing registered gift settlement deeds. As already noticed, the executants of the said gift settlement deeds cannot claim to have absolute title over the plots which they have gifted or settled. Their vendor Jaweed Ahmed/respondent No.5 during his lifetime denied having entered into any agreement of sale with the family members of the appellants. During the lifetime of Jaweed Ahmed, though claimants Nos.1 and 2/Respondents Nos.11 and 12 filed a suit, but that was for injunction simplicitor, they neither sought for any declaration nor specific performance of the contract.

22. Having carefully perused the entire material available on record, I have no hesitation to hold that the claim petitioners have not succeeded in establishing their claim and the learned District Judge has rightly dismissed their claim petition. There are no merits in the appeal.

23. In the result, the Appeal is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 28.03.2017
Dsr/Smr

M.S.K.JAI SWAL,J