HON'BLE Dr. JUSTICE SHAMEEM AKTHER

APPEAL SUIT No. 241 OF 1999

JUDGMENT:

1. The unsuccessful plaintiff in Original Suit No.238 of 1989 on the file of the Court of Senior Civil Judge, Sathupalli, Khammam District (for short, 'the trial Court'), preferred this Appeal challenging the decree and judgment dated 24.11.1998; wherein the trial Court dismissed the suit filed for eviction of the defendants 1 to 5, from the suit schedule property, which is a vacant site admeasuring 1,777 Sq. yards and 7 Sq. feet situated at Wyra, Somavaram village, Madhira Taluk and Khammam District, and handover its possession for the benefit of the plaintiff and defendants 6 and 7.

2. Appellant herein is the plaintiff and the respondents herein are the defendants before the trial Court. The parties as arrayed in the trial Court are referred hereunder.

3. The brief facts of the plaint are as follows: Plaintiff, who alleged to have born on 21.10.1968 and aged about 20 years at the time of filing suit, is the son of 7th defendant and younger brother of 6th defendant, who constituted as members of Hindu Mitakshara Family. 1st and 2nd defendants are the sons, 3rd defendant is the wife, and defendants 4 and 5 are the daughters of late Devabhakthini Satyanarayana, who alleged to have purchased the suit schedule property from the 7th defendant. Defendants 8 to 10 are the legal heirs of 6th defendant, who died during pendency of the Suit. It is further stated in the plaint that the father of the plaintiff (7th defendant), a man of licentious habits and vices, executed the sale deed under the original of Ex.A-3, certified copy of registered sale deed. It was further stated in the plaint that the original of Ex.A-3 was executed by the 7th defendant on 29.03.1975 when the plaintiff was minor

and, thereafter, he filed the suit within three years of his attaining majority by giving legal notice to the 1st defendant. Though in Ex.A-3 it was mentioned that the 7th defendant received the sale consideration of Rs.5,000/-, in fact, no sale consideration was received under that document. Further, the schedule property was proposed to be sold for Rs.9,000/-. Late Satyanarayana, father of defendants 1 and 2 and 4 and 5, executed a promissory note for Rs.9,000/- in favour of 7th defendant and obtained the sale deed. Though in Ex.A-3, there is a mention that the schedule property was sold by 7th defendant to meet the family necessities and for performance of marriages of his daughters namely Uma and Swarna, 7th defendant is working as Road Inspector in the Roads and Buildings Department and earning a amount of Rs.2,500/- by then and as such he is having sufficient income; there was no need to sell the schedule property to meet his family necessities. Further, there was also no necessity for him to alienate the schedule property to meet the marriage expenses of his daughters. Ex.A-3 is not supported by consideration and it is a bogus and sham document. The plaintiff being a coparcener has got 1/5th share in the schedule property and as such he filed the suit for eviction and recovery of the suit schedule property from defendants 1 to 5 for the benefit of his family members.

4. Defendants 1 to 3 filed common written statement denying the material allegations of the plaint *inter-alia* contending that the 7th defendant duly executed a registered sale deed, *vide* document bearing No.410/75, dated 29.03.1975, in favour of late Satyanarayana, by receiving a valid sale consideration of Rs.5,000/- prior to its execution. It was further contended by them that the 7th defendant sold the schedule property only for his legal necessities *i.e.,* for performing the marriages of his daughters namely Uma and Swarna, which can be found at Page No.7

of the register sale deed, Ex.A-3. It was further contended therein that late Satyanarayana did not execute any pronote in favour of 7th defendant, as he had paid entire sale consideration prior to registration, is invented only for the purpose of this suit. If really, the suit pronote was executed by the 7th defendant, nothing could have prevented him to file a suit for recovery of the pronote debt. It was further contended that the date of birth and attaining majority by the plaintiff, as stated in the plaint, are totally false and concocted for the purpose of this suit and, hence, the suit is barred by limitation. It was finally contended that the plaintiff used to threaten the persons, who earlier purchased lands from his father, 7th defendant, and as such, taking advantage of the absence of defendants 1 to 5 from the suit schedule property, filed this suit to get wrongful gain from defendants 1 to 5.

5. Defendants 6 and 7 and defendants 8 to 10 remained *ex parte* before the trial Court.

6. On the basis of above pleadings, the trial Court framed the following issues:

> 1. Whether the registered sale deed executed by the defendant No.7 in favour of the father of defendants 1 and 2 is true and valid?
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> 2. Whether the said registered sale deed was without consideration?
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> 3. Whether the father of the defendant Nos.1 and 2 had executed any promissory note for Rs.9,000/- on the date of registered sale deed in favour of defendant No.7?
>
> 4. Whether the sale consideration was utilized for the benefit of joint family consisting of plaintiff and defendants 6 and 7?
>
> 5. Whether the suit is barred by limitation?

6. To what relief?

7. During course of trial, the plaintiff himself was examined as P.W.1 and got examined P.Ws. 2 and 3 and marked Exs.A-1 to A-6 on his behalf. On behalf of the contesting defendants, 1st defendant himself was examined as D.W.1 and also examined D.W.2 but no documents were marked on their behalf.

8. Upon hearing the arguments of both the counsel, considering the oral and documentary evidence available on record, the trial Court dismissed the suit holding all the issues in favour of the contesting defendants and against the plaintiff.

9. Aggrieved by the impugned decree and judgment, dated 24.11.1998, passed in O.S. No.238 of 1989, by the trial Court, the plaintiff-appellant preferred this Appeal.

10. Heard the arguments of Mr. Kowturu Pavan Kumar, learned counsel for the appellant-plaintiff, and Mrs. N. Shoba, learned counsel for the contesting respondents-defendants.

11. Learned counsel for the appellant-plaintiff would submit that the sale transaction, covered under the original of Ex.A-3, is a sham and bogus document, and without consideration; there was no necessity for 7th defendant to alienate the suit schedule property. The averments made in the sale deed that the property was sold to meet the family necessities of 7th defendant and also to perform the marriages of his daughters, namely, Uma and Swarna, is absolutely false. Further, the suit schedule property was actually proposed to be sold for Rs.9,000/- but no such sale consideration was received; however, the father of the defendants 1, 2, 4 and 5, and husband of 3rd defendant, the vendee of the sale deed, had

executed a promissory note for Rs.9,000/- in favour of 7th defendant. Even then, late Satyanarayana did not pay the sale consideration to 7th defendant till date. The plaintiff examined the attestors of the sale deed, Ex.A-3, as P.Ws.2 and 3 and clearly and categorically brought on record that the sale deed is not supported by consideration and there was no necessity for 7th defendant to alienate the schedule property, as averred in the original of Ex.A-3. Since the schedule property is the ancestral property of family members of the plaintiff, 7th defendant is a man of having licentious habits and vices, credibility has to be given to the oral and documentary evidence adduced on behalf of the plaintiff. The trial Court erred in dismissing the suit without costs. The facts and circumstances of the case clearly establish the case of the plaintiff for the decree as prayed for.

12. On the other hand, learned counsel appearing on behalf of the contesting respondents-defendants would contend that P.Ws.2 and 3 are behind the plaintiff (P.W.1) to institute the suit for eviction and recovery of possession. Father of the contesting defendants had purchased the suit schedule property for a valuable sale consideration of Rs.5,000/-; the same is clearly mentioned in Ex.A-3; there is also specific mention in Ex.A-3 that the suit schedule property was sold by the 7th defendant to meet his family necessities and also to perform the marriages of his daughters, namely, Uma and Swarna; being kartha of the family, 7th defendant had sold and executed the sale deed under the original of Ex.A-3. The contentions raised by the plaintiff that 7th defendant had got licentious habits and vices is absolutely false and the same is invented for the purpose of this suit; no promissory note was executed in favour of 7th defendant by late Satyanarayana, as contended by the plaintiff. The ocular evidence led by the plaintiff is absolutely false and only to cause loss and

damage to the contesting defendants the suit is filed on all false and baseless allegations. The date of birth pleaded by the plaintiff is absolutely false and as such the suit is barred by limitation. The trial Court had appreciated all the facts and circumstances and came to a just conclusion; there is no infirmity to warrant any interference with the impugned decree and judgment and, ultimately, prayed for dismissal of the Appeal with costs.

13. In view of the submissions and contentions made by both the counsel, the following points have come up for consideration:

1. Whether the sale transaction in question (covered under the original of Ex.A-3) is not genuine and not supported by consideration?
2. Whether 7th defendant is kartha of the Joint Hindu Family? and can alienate the suit schedule property?
3. Whether late Satyanarayana, executed a promissory note for Rs.9,000/- in favour of 7th defendant, as contended by the plaintiff?
4. Whether the suit is filed within limitation?
5. Whether the decree and judgment dated 24.11.1999, passed by the trial Court in O.S. No.238 of 1989 is liable to be set-aside?

14. **POINT No.4**: As seen from the averments made in the plaint and the evidence of P.W.1 his date of birth is mentioned as 21.10.1968 and, admittedly, the suit is filed on 23.01.1989 *i.e.,* within three years from the date of his attaining majority. Though it is mentioned in the plaint and deposed by P.W.1 in his evidence, there is no cogent and convincing evidence to believe the date of birth of the plaintiff. In addition to getting

marked Exs.A-1 and A-2, which are the academic documents, the plaintiff failed to examine his family members or the authorities who issued Exs.A-1 and A-2 to prove his date of birth. Except the self serving testimony of the plaintiff, there is no evidence on record to prove the exact date of birth of the plaintiff. P.W.1 is not the right person to say is date of birth; the plaintiff failed to produce his birth certificate, issued by competent authority *i.e.,* Registrar of Births and Deaths. The date of birth mentioned in Exs.A-1 and A-2 is only a probability and it is not a conclusive proof, unless the authors of those documents are examined, to prove the actual date of birth of the plaintiff. Even in Ex.A-4, office copy of legal notice dated 16.08.1988, date of birth of the plaintiff was mentioned as 21.10.1968, but he failed to adduce the evidence of his father, 7th defendant, who was very much alive by then. Hence, the trial Court, relying on the evidence of the witnesses and referring to several decisions, rightly decided the issue in favour of the contesting defendants and against the plaintiff. Hence, no different opinion can be substituted.

15. **POINT Nos.1 to 3 & 5**: All these points are interconnected and required to be answered together. It is evident from the record that 7th defendant, father of the plaintiff, is alive by the date of filing the suit. Though a notice was served in the suit as well as in the appeal, he did not choose to appear either before the trial Court or before this Court to state that, he is not kartha of the family; he has no competency to alienate the suit schedule property; he did not receive the sale consideration under the original of Ex.A-3; there was no necessity to sell the schedule property; the schedule property was not sold for Rs.5,000/- and it was agreed to be sold for Rs.9,000/-; he did not state that late Satyanarayana (vendee) executed a pronote in his favour and he did not choose to dispute the sale transaction entered between him and late Satyanarayana till date. The

7th defendant has no say in the matter. It is submitted by the learned counsel for the appellant-plaintiff that there is a promissory note for Rs.9,000/-, executed by late Satyanarayana in favour of plaintiff's father but that promissory note has not been filed before the Court by the plaintiff. There is no evidence to believe that 7th defendant received Rs.9,000/- from late Satyanarayana and returned the so called pronote. There is also no evidence, at any point of time, that there was a dispute between the 7th defendant and late Satyanarayana with regard to receipt of the sale consideration mentioned under the original of Ex.A-3. Further, it is also relevant to state that if the 7th defendant did not receive the sale consideration, as mentioned under the original of Ex.A-3, he could have take steps to recover the same, such as filing a suit for receipt of the sale consideration or got the matter settled through elders *etc.,* on this aspect, there is no such absolute evidence on record. On a perusal of the averments made in Ex.A-3, it clearly indicates that the suit schedule property was sold for a valuable sale consideration of Rs.5,000/- and the same was received by the executant, 7th defendant, possession was delivered and the sale deed in question *i.e.,* original of Ex.A-3, was executed. Admittedly, plaintiff is not a witness to the sale transaction covered under the original of Ex.A-3. Therefore, he is not a competent witness to speak about the genuineness of Ex.A-3. P.Ws.2 and 3 who are said to be the attestors and witnesses to the execution of sale transaction under the original of Ex.A-3, have acknowledged the averments of the sale deed. P.W.2 – S. Nageswara Rao, supported the case of the plaintiff *in toto* with regard to the settlement of the sale transaction at Rs.9,000/-, but the sale consideration under Ex.A-3 was mentioned as Rs.5,000/- to avoid stamp duty and penalty. He further stated that the agreed sale consideration was not received by 7th defendant and thereafter a pronote for Rs.9,000/- was executed by late Satyanarayana in favour of 7th defendant. If the facts stated by P.Ws.1 and 2 are correct, undoubtedly, the aggrieved person might be the executant of the sale deed *i.e.,* 7th defendant could have taken the required steps under law to receive the sale consideration; there is no such evidence on record. There is also specific evidence of P.W.2 that the so called promissory note is with the 7th defendant; if such is the case, nothing could have prevented 7th defendant to file a suit for recovery of the promissory note amount. Under law, a sale deed can be executed and registered on payment of part sale consideration; if the evidence of P.W.2 regarding non payment of sale consideration is taken as true, there was no difficulty in getting the sale deed executed and registered with those recitals.

16. The evidence of P.W.3 is that he knows the parties to the suit and as such he knew the sale transaction which took place 22 years prior to filing of the suit. His further evidence is that the property in question was purchased by late Satyanarayana for construction of a cinema hall. He signed on the original of Ex.A-3 as an attestor along with P.W.2. His evidence further revealed that he did not go to the schedule property and no consideration was passed in his presence and as such the sale confirmation was not put in his presence. He does not know the survey number and boundaries of the schedule property, which is a vacant site; he does not know the amount of sale consideration.

17. If the evidence of P.Ws.1 and 2 is read together, it is clear that P.Ws.2 and 3 have signed on the original of Ex.A-3 as attesting witnesses. Had there was no payment of sale consideration and the sale deed was executed for Rs.5,000/-, and when the agreed sale consideration of Rs.9,000/- was not paid and a promissory note was executed by the vendee in favour of the vendor, P.W.3 could have corroborated the evidence of P.W.2 and supported the case of the plaintiff *in toto*.

Therefore, there is no corroborating evidence relating to the circumstances of executing and registering the original of Ex.A-3, without sale consideration and executing a pronote for Rs.9,000/- in lieu of sale consideration.

18. In view of the facts and circumstances of the case, the burden to prove non-payment of the sale consideration and execution of pronote in lieu of non payment of sale consideration is on the plaintiff. Viewing from any angle, considering the totality of the facts and circumstances of the case, it cannot be said that no sale consideration was received by 7th defendant while executing the sale deed under the original of Ex.A-3, in respect of suit schedule property.

19. It is an admitted fact, that 7th defendant is kartha of Joint Hindu Undivided Family. There are specific recitals in Ex.A-3 that the suit schedule property was sold by 7th defendant to meet his family necessities and also to perform the marriages of his daughters, namely, Uma and Swarna, who are sisters of the plaintiff. It is evident from the record that 7th defendant is an employee in the Roads and Buildings Department; 6th defendant is the elder brother of the plaintiff and as per the evidence of P.W.2 plaintiff has three sisters and a mother, who constitutes a large family and there is no record to show that all of them are uneducated. There is also no evidence to disbelieve that the sisters of plaintiff namely Uma and Swarna were not married by then.

20. It is also relevant to state that the plaintiff attributed in the plaint that his father, 7th defendant, is having licentious habits. P.Ws.2 and 3 did not say anything about the conduct and character of 7th defendant, they only spoke that the document in question is not supported by sale consideration and also they further did not say that there was no necessity

to alienate the property. From their evidence also it is not clear that 7th defendant is a man of licentious habits. There is also no evidence on record to show the other movable and immovable joint family properties of the plaintiff. Admittedly, the suit is also not filed to set-aside the sale transaction covered under the original of Ex.A-3 and the suit is filed only to evict the contesting defendants and hand over the possession of the schedule property for the benefit of plaintiff and defendants 6 and 7. It is also relevant to state that 6th defendant, being elder brother of the plaintiff, did not challenge the sale deed in question. Had the averments of the plaint are true, 6th defendant could also be the aggrieved person and could have supported the case of the plaintiff by filing written statement and have deposed in favour of the plaintiff, during his life time. This is also an incriminating circumstance to defeat the claim of the plaintiff. 7th defendant, father of the plaintiff, remaining *ex parte* all through, is also another strong circumstance to prove that the claim of the plaintiff is not genuine and as such adverse inference can be drawn against the case on the plaintiff. D.W.1 has supported the case of contesting defendants. The evidence of D.W.1 reveals that 2nd defendant is his younger brother, 3rd defendant is his mother, and defendants 4 and 5 are his sisters. The evidence of D.W.2 reveals that he is an agriculturist and knows 7th defendant, who worked in Roads and Buildings Department, for 50 years. His further evidence is that the brother of 7th defendant is his classmate and there are no bad remarks in the service of 7th defendant. 7th defendant has no bad habits. He further deposed that the 7th defendant sold away all his properties, for the last 20 years, as his family is a big family and to perform the marriages of his daughters. The suit schedule property was sold in the year 1975 for Rs.5,000/-. Nothing worthwhile is elicited in his cross-examination to discard his testimony. Hence, 7th defendant is a man of licentious habits is only an invented theory by the plaintiff for the purpose of this case to gain unlawfully and illegally. Further it can be inferred from a reappraisal of entire evidence, placed before this Court, that the 7th defendant is *kartha* of Joint Hindu Undivided Family and in need of money for his legal family necessities, including to perform the marriages of his daughters namely Uma and Swarna, he sold the schedule property to late Satyanarayana for a valid sale consideration.

21. The trial Court had framed all the relevant issues and meticulously analyzed the whole evidence on record by referring to various decisions and came to a just conclusion in dismissing the suit without leaving any factual or lawful question to be decided by this Court. Nothing is left over in the facts and circumstances of the case and no other opinion can be substituted and as such all the contentions raised on behalf of the appellant-plaintiff do fail. Hence, the Appeal Suit is liable to be dismissed.

22. In the result, the Appeal Suit is dismissed confirming the decree and judgment, dated 24.11.1998, passed in O.S. No.238 of 1989 by the trial Court.

23. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed as infructuous. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 03-03-2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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