

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL Nos.1327, 1332 AND 1334 OF 2012

COMMON JUDGMENT:

Since subject matter is one and the same and, in fact, parties are also common in different capacities, all these three Second Appeals have taken up together for disposal by way of a common judgment at the admission stage itself having heard the learned counsel for the parties in each of these appeals.

2. Second Appeal Nos.1327 and 1334 of 2012 arise from A.S. No.7 of 2008 and 2 of 2009, respectively, on the file of the Senior Civil Judge, Pithapuram, which were disposed of on 28.03.2012. Both the said First Appeals i.e., A.S. No.7 of 2008 and A.S. No.2 of 2009, in fact, arise from one and the same original suit in O.S. No.15 of 1999 on the file of the Junior Civil Judge, Pithapuram, by judgment and decree, dated 22.10.2007, decreeing the suit filed for the relief of perpetual injunction restraining the defendants therein, who are appellants in S.A. Nos.1327 and 1334 of 2012 and defendant No.3 and plaintiff No.4, respectively, in O.S. No.53 of 1999, on the file of the Junior Civil Judge, Pithapuram.

3. A.S. No.2 of 2009 and A.S. No.7 of 2008 were filed by defendant Nos.1 and 2 challenging the same judgment and decree, dated 22.10.2007, in O.S.No.15 of 1999. In the said suit, defendant No.2 is a tenant of Acs.3-25 cents in Survey No.134 of Agraharam,

Pithapuram. In fact, suit in O.S. No.15 of 1999 confines only to the extent of Ac.1.00 of land, which is the subject matter of registered gift deed marked as Ex.A-1 in O.S. No.53 of 1999, which was filed by plaintiff Nos.1 to 4 originally and later plaintiff Nos.5 to 7 were added as legal representatives of deceased plaintiff No.2, amongst whom, plaintiff No.4 said to have executed a registered gift deed in favour of defendant No.1 therein - Tatikonda Chellaratnam and her husband was made as defendant No.2 and the tenant as defendant No.3, who is appellant in S.A. No.1327 of 2012.

4. The suit in O.S. No.15 of 1999 was filed by the plaintiff - Tatikonda Chellaratnam against the appellants in S.A. Nos.1327 and 1334 of 2012 seeking for the relief of perpetual injunction, and the trial Court decreed it by judgment and decree, dated 22.10.2007. Aggrieved over the said decree, the defendants therein preferred two different appeals i.e., A.S. No.2 of 2009 by defendant No.1, while A.S. No.7 of 2008 by defendant Nof.2 - tenant. The learned appellate Court having considered the material on record dismissed both the appeals by judgments and decrees separately, dated 28.03.2012, confirming the judgment and decree passed by the trial Court. Aggrieved over the same, the defendants preferred the aforesaid second appeal Nos.1327 and 1334 of 2012, respectively.

5. Whereas, the relief sought for in O.S. No.53 of 1999 was to cancel the registered gift deed (Ex.A-1), dated 22.04.1996 in favour of defendant No.1 therein on the main ground that defendant No.1's

maternal uncle, by name Arigela Jagan Mohan Rao, demanded the family members of the plaintiffs to gift Acs.3.25 cents of land on lease to him, and since they refused such request as defendant No.3 - tenant therein was in possession thereof, the said A. Jagan Mohan Rao bore grudge against the plaintiffs and with a view to grab the said land, brought the registered gift deed into existence with false representation and impersonation. That has been the main ground agitated in O.S. No.53 of 1999 by the plaintiffs therein and ultimately they did not succeed and the suit was dismissed, by judgment and decree, dated 22.10.2007, by recording definite findings on as many as eight (8) issues settled for trial by appreciating the evidence let in on behalf of the plaintiffs, both, oral as PWs.1 to 4 and documentary as Ex.A-1, and on behalf of defendants as DWs.1 and 2 and Exs.B-1 and B-2. Aggrieved over the same, when the plaintiffs preferred a regular appeal in A.S. No.4 of 2008 on the file of the Senior Civil Judge, Pithapuram, on reappraisal of evidence, the learned appellate Judge affirming the findings recorded by the trial Court, dismissed the appeal, by judgment and decree, dated 28.03.2012.

i) Aggrieved over the same, the plaintiffs have preferred the second appeal in S.A. No.1332 of 2012, raising the following substantial questions of law in paragraph No.4 of the memorandum of Grounds of Appeal.

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- (a) Whether, on the facts and in the circumstances of the case, the courts below are right in holding that Ex.A.1 gift deed is a valid

and genuine basing on inadmissible documents Exs.B1 and B2 and thereby holding that the joint family properties were already partitioned and PW 2 can execute gift deed in favour of the plaintiff.

- (b) Whether, on the facts and in the circumstances of the case the lower appellate court is right in not considering the documents and relevant evidence on record in a proper perspective and if the lower appellate court considered the same in a proper perspective would have led to an opposite conclusion.”

6. Heard Sri J. Seshagiri Rao, learned counsel for the appellant in S.A. No.1327 of 2012, Sri M.S.R. Subrahmanyam, learned counsel for the appellant in S.A. Nos.1332 and 1334 of 2012, and Sri M.R.S. Srinivas, learned counsel for respondent No.1 in all the second appeals.

7. Perused the material on record and the evidence, both, oral and documentary, let in by the parties.

8. The suit in O.S. No.15 of 1999 was decreed by the learned trial Court on 22.10.2007 appreciating the evidence of PW.1 and Exs.A-1 to A-7 and analyzing the evidence of DWs.1 to 4. The relief for perpetual injunction, thus, was granted by confining Ac.1-00 cents of land in Sy.No.134 within specific boundaries shown in the schedule. Aggrieved over the same, defendant Nos.1 and 2 therein preferred the first appeals, as referred to in the above. They did not succeed since the appellate Court confirmed the decree passed by the trial Court. That is how the present second appeal Nos.1327 and 1334 of 2012 have been filed by the tenant and the owner questioning the

judgments and decrees passed by the trial Court being confirmed by the appellate Court, while S.A. No.1332 of 2012 is preferred by the plaintiffs in O.S. No.53 of 1999 who were unsuccessful throughout. Thus, in all these second appeals, concurrent findings recorded by the Courts below have been under challenge.

S.A. No.1332 of 2012

9. Initially, the suit in O.S. No.53 of 1999 requires advertence.

i) As mentioned in the above, the registered gift deed executed by plaintiff No.4 in favour of defendant No.1 was sought to be annulled on the main grounds of 'false misrepresentation' and 'impersonation'. Thus, serious allegations have been alleged by the plaintiffs, further alleging that A. Jagan Mohan Rao was instrumental. Even, a cursory glance at the evidence on record, both, oral and documentary, as discussed by the learned trial Court, would not disclose that the plaintiffs have not directed themselves in letting in any evidence to prove that Ex.A-1 registered gift deed, dated 22.04.1996 was the outcome of 'false misrepresentation' and 'impersonation'. In fact, the grounds of 'false misrepresentation' and 'impersonation' would run mutually contrary to each other. 'Impersonation' indicates that donor did not at all participate, and in his place, someone-else personated him in executing and registering a gift deed. That has not been the theme at all throughout the evidence let in by the plaintiffs. No doubt, the learned counsel for the appellants in the present appeal tried to impress upon the Court by

contending that the gift of joint family property by one of the members of the joint family is invalid, and that has been the settled law and, therefore, the judgments and decrees rendered by the Courts below are unsustainable.

ii) The second ground agitated by him is that the defence agitated by defendant No.1 that the suit property, which is the subject matter of gift, is not the joint family property and it is the exclusive property of PW.1 - plaintiff No.3 got by virtue of Ex.B-2 - partition deed cannot be accepted and acted upon for the reason that Exs.B-1 and B-2 are photostat copies of sale deed and partition deed and they are inadmissible in evidence, besides the fact that though oral partition has been set up, Ex.B-2, which is a written partition deed unregistered one, cannot stand up and, therefore, the suit of the plaintiffs ought to have been decreed and ought not to have been dismissed.

iii) On the other hand, Sri M. R.S. Srinivas, learned counsel for respondent No.1, would submit that in fact, evidence of PWs.1 and 2 would clearly show that they made positive admissions as regards Exs.B-1 and B-2 and that the admissions have been extracted by the trial Court in paragraph No.12, and once Exs.B-1 and B-2 are admitted by PWs.1 and 2, the question of discarding them on the ground that they are inadmissible in evidence as the same are Photostat copies does not hold water.

iv) A perusal of discussion made by the learned appellate Court would clearly indicate that some of the plaintiffs have independently sold away certain extents and the same were specifically confronted to PWs.1 and 2, who gave positive admissions and, in fact, went to the extent of stating that they sold away distinct extents basing on Ex.B2. In such an event, certainly, the submission of the learned counsel for the appellants would not merit. Further, the plaintiffs themselves have to prove 'false misrepresentation' and 'impersonation' in order to get the relief of the cancellation of registered gift deed. In which direction, as already mentioned in the above, except a bald plea taken in the plaint, no evidence at all was let in to substantiate their stand. Therefore, the judgment and decree passed by the learned trial Court and confirmed by the appellate Court, which has independently dealt with by appreciating the evidence on record and recorded the findings on the points formulated by it do not warrant any interference as they do not suffer from any patent illegality warranting interference at all.

v) In that view of the matter, the questions now formulated by the appellants, as mentioned in the above, cannot be construed as substantial questions of law at all and, therefore, the present second appeal is liable to be dismissed.

S.A. Nos.1327 and 1334 of 2012

10. Turning to the present second appeals in S.A. Nos.1327 and 1334 of 2012, the same situation would arise. In fact, when once

the gift is held to be valid and cannot be cancelled by rejecting the relief in other suit O.S. No.53 of 1999, certainly, the plaintiff in O.S. No.15 of 1999 is entitled to the relief of perpetual injunction against the defendant Nos.1 and 2, amongst whom, defendant No.2, who is appellant in S.A. No.1327 of 2012, as the tenant, who came on record by impleading himself.

i) The learned counsel for the appellant in S.A. No.1327 of 2012 would, no doubt, contend that the tenant filed A.T.C. No.3 of 1999 and, in fact, he succeeded in the appellate Court and he was the tenant for Acs.3.25 cents and Exs.A-1 to A-7 were also considered and, therefore, in the presence of his possession over Ac.1.00 of land, which is the subject matter of suit, both the Courts below went wrong in granting perpetual injunction by judgments and decrees.

ii) Sri M.R.S. Srinivas, learned counsel for respondent No.1 - plaintiff, would submit that in fact, the appellate Court's judgment was questioned in C.R.P. No.3870 of 2011 before this Court, and the said CRP was allowed, by order, dated 29.11.2011, setting aside the order of the appellate Court, dated 15.07.2011 in ATA No.3 of 2008, confirming the order, dated 22.10.2007 in A.T.C. No.3 of 1999 passed by the Tenancy Court, and when the matter was carried to the Hon'ble Supreme Court by the appellant - tenant herein in Special Leave to Appeal (Civil) of 2012 [CC 17346-17347/2012], the Hon'ble Apex Court, by order, dated 05.10.2012, dismissed the petitions filed by the tenant. In the presence of the order in C.R.P. No.3870 of 2011

rendered by a learned Single Judge of this Court on 29.11.2011 and the order of the Hon'ble Supreme Court, dated 05.10.2012, certainly, no substantial question of law does arise in the present second appeals as the possession of the appellant - tenant herein legally cannot be viewed. Therefore, both the appeals are liable to be dismissed.

11. In view of the aforesaid discussion, all these three Second Appeals are dismissed, but in the circumstances, there shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any pending in the second appeals, stand closed.

July 25, 2017.
Mgr

A. SHANKAR NARAYANA, J

