

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Second Appeal No. 913 of 2016

Judgment:

Heard learned counsel for the appellant and learned counsel for the respondents.

2. This Second Appeal is filed against the concurrent findings of fact recorded by both the Courts below in a suit arising out of recovery of possession of the suit schedule property filed by the respondents herein in O.S.No.272 of 1999 on the file of IV Additional Junior Civil Judge, Ongole and as confirmed by the learned III Additional District Judge (Fast Track Court), Ongole in A.S. No.181 of 2002.

3. The case of the plaintiffs is that the defendant is their senior paternal uncle. Their grand mother one Nuvvula Seshamma was the original owner of the schedule property. She executed a registered settlement deed on 07.12.1981 bequeathing the schedule property to the plaintiffs who were minors at that time represented by their mother as guardian. The defendant obtained the thumb marks of their grand mother Seshamma on blank papers and filed O.S.No.33 of 1982 on the file of the Principal Senior Civil Judge, Ongole, created fake document with ante date and the said suit was dismissed on 31.03.1988. When an appeal was preferred in A.S.No.42 of 1988 the same was also dismissed. The defendant preferred revision before this Court in C.R.P.No.5361 of 1994 and the same was also dismissed. During the pendency of the said suit, O.S.No.33 of 1982 the defendant forcibly entered into the schedule property after obtaining interim injunction in I.A.No.503 of 1982. The plaintiffs were minors at that time and the guardian being a helpless lady

could not resist the said trespass. In spite of request by the plaintiffs for redelivery of the property the defendant did not deliver the possession and in those circumstances, the plaintiffs got issued a registered notice through their counsel on 30.11.1998 demanding the defendant to deliver possession and mesne profits and the defendant after receipt of the notice sent a reply with false averments.

4. The defendant filed a written statement stating that the suit schedule property got merged with the property of the defendant and father of the plaintiffs. They divided the said properties along with other properties about 20 years back with the full consent of their mother. The suit schedule land fell to the share of the defendant and other lands fell to the share of the father of the plaintiffs. The plaintiffs obtained the settlement deed by playing fraud. The defendant has been in possession of the schedule property continuously. The case set up by the plaintiffs with regard to dismissal of the suits filed by the defendant was admitted, but it was stated that the criminal case filed against the defendant ended in acquittal. It is further stated that the plaintiffs and their parents entered into a compromise before the elders on 22.08.1996 and a deed of compromise was executed by the plaintiffs and their parents on one hand and the defendant on the other hand. In view of the said compromise only, C.R.P.No.5361 of 1994 was withdrawn by the defendant. In the said compromise, the plaintiffs and their mother agreed to give up their claim in the schedule property. After keeping quiet for three years, the present suit was filed.

5. In the light of the above averments, the trial Court framed the following issues.

1. Whether the plaintiff is entitled to recover possession of the schedule property?
2. Whether the suit is barred by limitation?
3. To what relief?

6. Before the trial Court the first plaintiff was examined as PW.1 and marked Exs.A1 to A5. The plaintiffs' mother was examined as PW.2 and marked Exs.A6 and A7. One Assistant from the office of the Mandal Revenue Officer was examined as PW.3 and Exs.X1 and X2 were marked. The defendant was examined as DW.1 and marked Ex.B1, certified copy of judgment in A.S.No.42 of 1988. The certified copy of order in I.A.No.411 of 1994 in the said appeal was marked as Ex.B2. Besides the same, Exs.B3 to B8 were also marked. The Village Administrative Officer of Takkalapadu was examined as DW.2 and five other witnesses were examined as DWs.3 to 7.

7. On the basis of oral and documentary evidence, the trial Court held that the plaintiffs are entitled to recover possession of the schedule property and further held that the suit was not barred by time, by its judgment and decree dated 11.09.2002. Against the same, the defendant preferred A.S.No.181 of 2002 before the Court of III Additional District Judge (Fast Track Court), Ongole, who dismissed the said appeal by judgment and decree dated 05.04.2005.

8. This Court carefully perused the judgments of both the Courts below and noticed that the settlement deed executed by the grand mother of the plaintiffs and mother of the defendant was a registered settlement deed and it was marked as Ex.A1. The compromise deed alleged to have been entered into by the parties was exhibited as Ex.B4 and it was not registered. The defendant himself admitted in the cross-

examination that the entire compromise deed was not acted upon. It is also clear from the evidence that the plaintiffs were minors at the time of entering into the deed of compromise. The minority of the plaintiffs was disputed, but the trial Court took into consideration Exs.X1 and X2 and held that the plaintiffs were minors at the time of entering into compromise. The other plea taken up by the defendant that he acquired title to the schedule property by adverse possession and the suit is barred by limitation was also negated by the trial Court on the ground that the defendant failed to prove the plea of adverse possession. The lower appellate Court rightly came to the conclusion that for a suit for recovery of possession the limitation is 12 years, but not 3 years and it is governed by Articles 64 and 65 of the Limitation Act. The lower appellate Court also noticed that execution of the registered settlement deed was not disputed by the defendant.

9. In the above circumstances, I see no reason to interfere with the concurrent findings of fact recorded by both the Courts below and no substantial question of law arises for consideration in the present Second Appeal.

10. The Second Appeal is, accordingly, dismissed. There shall be no order as to costs.

11. The miscellaneous petitions, if any, pending in this Second Appeal shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 20.01.2017
Nsr