

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

SECOND APPEAL NO.698 OF 2016

JUDGMENT:

This Second Appeal is preferred against the judgment and decree dated 4.3.2016 in A.S. No.80 of 2012 on the file of Additional District Judge, Naarsapur, confirming the judgment and decree dated 26.2.2010 in O.S. No.183 of 2005 on the file of Principal Junior Civil Judge at Palakol.

2. The appellants are the plaintiffs in the suit. Alleging that the plaint schedule land to an extent of Ac.1-00 cents belongs to the respondents 1 to 4 and contending that Ex.A1 - Agreement of Sale, dated 6.6.1991 was executed by the father of the respondents 1 to 4 in his favour and the sale consideration was paid by the appellants 2 and 3 and their father Sri K.V.V. Satyanarayana, that possession of the property was delivered to the appellants 2 and 3, the appellants filed O.S. No.183 of 2005 for specific performance of Agreement of Sale and for consequential permanent injunction restraining the respondents from trespassing into the plaint schedule land and costs.

3. The suit was filed on 18.5.2005, fourteen years after Ex.A1 - Agreement of Sale allegedly executed by the father of the respondents 1 and 2, who are minors on that date, and by the respondents 3 and 4.

4. The 5th respondent filed a written statement. It was adopted by the respondents 1 to 4 and 6. They contended that the respondents 1 to 4 were the owners of the plaint schedule property as per Registered Sale Deeds (Exs.A2 to A5), dt. 6.5.1981; that the 5th respondent has to look after the property on behalf of respondents 1 to 4; that neither himself nor the 6th respondent or respondents 3 and 4 ever executed Ex.A1 or offered to sell the plaint schedule property to them or to their father.

Receipt of consideration of Rs.55,000/- was also denied and it was contended that Agreement of Sale dated 6.6.1991 was a forged document. They also claimed to have sold the plaint schedule property to 7th respondent under Exs.A-11 to A-14 – Certified copies of Registered Sale Deeds, dt. 23.04.2005 and handed over possession to him. They denied possession of the appellants.

5. Seventh respondent supported the stand taken by other respondents.

6. The trial Court framed the following issues:

- (1) Whether the suit agreement of sale dated 06.06.1991 is true, valid and binding on the defendants?
- (2) Whether the suit Agreement of Sale is forged one as contended by the defendants 1 to 6?
- (3) (a) Whether the plaintiffs 2 and 3 are in physical possession and enjoyment of the plaint schedule property? Or
(b) Whether the 7th defendant is in physical possession and enjoyment of the plaint schedule property?
- (4) Whether the suit is barred by Limitation?
- (5) Whether the 7th defendant is a bona fide purchaser of the suit schedule property for valuable consideration?
- (6) Whether the 7th defendant is not a necessary party to the suit as contended by her?
- (7) Whether the plaintiffs 2 and 3 are entitled for specific performance of contract of suit Agreement of Sale dated 06.06.1991?
- (8) Whether the plaintiffs are entitled for permanent injunction as prayed for?
- (9) To what relief?

7. The appellants examined P.Ws.1 to 6 and marked Exs.A1 to A14. On behalf of the defendants, husband of 7th respondent examined himself as D.W.1 and marked Exs.B1 & B2.

8. By judgment and decree dated 26.2.2010, the trial Court dismissed the suit. It held that the suit is barred by limitation since the

recital in Ex.A1 showed that the sale deed would be registered in favour of the appellants, after the respondents 1 and 2 attained majority, but the date on which the respondents 1 and 2 attained majority was not proved by the appellants. It also held that the very execution of Ex.A1 is not proved since there were inconsistencies in the evidence of plaintiffs' witnesses. It also further held that the suit agreement was not proved to have been forged, that the appellants 2 & 3 were not in possession of the plaint schedule property and that 7th respondent was in physical possession thereof.

9. Challenging the same, the appellants filed A.S. No.80 of 2012 before the Additional District Judge, Narsapur to confirm the findings of the trial Court.

10. Though the learned counsel for the appellants contended that the judgments of the Courts below are not sustainable, having regard to the fact that Ex.A1 itself contained a recital that, after attaining majority by respondents 1 and 2, registered sale deed would be executed by the respondents 1 to 4 in favour of the appellants, it was incumbent upon on the part of appellants to prove when the respondents 1 and 2 attained the age of majority and that the suit was filed shortly thereafter within limitation. Since the appellants have failed to prove the same, the trial Court as well as the lower appellate Court were right in holding that the suit itself was barred by limitation. Further, the finding of both the Courts below that Ex.A1 – Agreement of Sale was not proved by the appellants was arrived at on appreciating the evidence on record and the concurrent findings of fact on the said issue cannot be said to be perverse warranting interference by this Court in the Second Appeal.

11. Therefore, I do not find any substantial questions of law arisen for consideration in the Second Appeal, and accordingly the Second Appeal is dismissed. No costs.

As a sequel, miscellaneous petitions if any pending in the Appeal shall stand closed.

Dt. 1.2.2017
gbs

M.S. RAMACHANDRA RAO,J

