

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

C.C.C.A.No.41 of 2017

JUDGMENT

This appeal, under Section 96 of C.P.C., is directed against the judgment and decree dated 01.11.2014 passed in O.S.No.241 of 2014 by the learned X Additional Chief Judge, City Civil Court, Hyderabad.

2. Appellant herein is defendant No.4 and respondents herein are plaintiff and defendants 1 to 3 in O.S.No.241 of 2014. For the sake of convenience, the parties are referred to as they are arrayed in the suit before the Court below.

3. The facts, in brief, are that the plaintiff is the absolute owner and possessor of the premises bearing H.No.3-6-750/D, admeasuring 465.5 square yards, situated at Himayathnagar, Hyderabad, having purchased the same along with her son Bharadwaj, by registered sale deed bearing document No.226/1984 and later, her son died intestate. She executed a gift settlement deed bearing document No.1127 of 2003 dated 07.04.2003 in favour of her brother's son i.e., first defendant, parting the portion towards east and south corner of said house on condition that the first defendant shall not alienate or transfer the suit schedule property and shall not construct or raise any structures in and over the said property and he is entitled to enjoy the said property as absolute owner. While so, plaintiff came to know that the first defendant, without there being any marketable title, sold the suit schedule property in favour of Defendants 2 and 3 unauthorizedly vide

registered sale deed dated 24.07.2007. Subsequently, defendants 2 and 3 had created another gift settlement deed dated 23.10.2009 in favour of defendant No.4. It is stated that defendant No.1 had contravened the specific conditions of registered gift settlement deed as the said property is heritable but not alienable. Hence, the plaintiff filed suit for cancellation of registered gift deed dated 07.04.2003 and for recovery of possession by evicting the defendants from the suit schedule property.

4. Though defendant No.4 received summons, he did not turn up and he was set *ex parte* on 11.09.2014. Similarly, though publication was ordered against defendants 1 to 3, they were called absent and set *ex parte*. Thereafter, plaintiff examined herself as P.W.1 and Exs.A1 to A4 were marked on her behalf. The Court below having considered the evidence of plaintiff and documents Exs.A1 to A4 decreed the suit with costs. Challenging the said *ex-parte* decree, the present appeal is filed.

5. Heard Sri I.V.Siddhivardhana, learned counsel for appellant and Sri J. Ashvini Kumar, learned counsel for first respondent/plaintiff.

6. Learned counsel for appellant/D4 contended that the plaintiff obtained *ex-parte* decree fraudulently without serving the suit summons on defendants by mentioning wrong address and that the plaintiff made publication by way of substituted service in "Patrikeyam" newspaper, which has no wide circulation. He further contended that the Court below has not afforded an opportunity to

defend their case and thus, he prayed to allow the appeal by setting aside the *ex parte* decree passed by the Court below.

7. Learned counsel for first respondent/plaintiff contended that the Court below after giving sufficient opportunity to the defendants passed the decree in favour of plaintiff and therefore, there is no need to interfere with by this Court.

8. Perused the record. It is evident from the suit docket proceedings filed by appellant that on 11.09.2014, it was noted that publication filed. D4 called absent and set *ex parte* and await service of notice on D1 to D3. On 19.09.2014, it was noted that permission to publish notice for D1 to D3 by way of substituted service in 'Patrikeyam' daily newspaper was granted by the Court below in I.A.No.1319 of 2014 and on 15.10.2014, it was noted that publication filed and D1 to D3 called absent and set *ex parte*. The docket proceedings would reveal that the publication by way of substituted service of notice was not taken up in accordance with law since the newspaper 'Patrikeyam' has no wide circulation where the party is proposed to be summoned. In that view of the matter, it is a fit case where the judgment and decree passed by the Court below are liable to be set aside and are accordingly, set aside and the matter is remanded to the Court below for disposal afresh in accordance with law after affording an opportunity of hearing to parties.

9. In the result, the appeal is allowed, by setting aside the judgment and decree dated 01.11.2014 in O.S.No.241 of 2014 on the file of X Additional Chief Judge, City Civil Court, Hyderabad, and the matter is remanded to the Court below for disposal afresh in

accordance with law, as expeditiously as possible, within a period of six months from the date of receipt of a copy of this order. It is needless to observe that the parties are at liberty to advance their respective arguments. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

JUSTICE M.S.K. JAISWAL

27th February, 2017
sj

