

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.719 OF 2014

JUDGMENT:

The present Second Appeal is preferred by the deceased plaintiff, who has lost before both the Courts below, challenging the judgment and decree, dated 30.07.2014, passed by learned VIII Additional District Judge holding Full Additional Charge of IX Additional District Judge, Chittoor, confirming the judgment and decree, dated 31.07.2007, passed by the learned II Additional Junior Civil Judge, Chittoor.

2. Heard Sri Karri Murali Krishna, learned counsel for the appellants - plaintiffs.

3. The appellants herein are the legal representatives of the deceased sole plaintiff in O.S. No.350 of 2004, while respondent is defendant. For the sake of convenience, the parties herein are referred to as they were arrayed in the aforesaid suit.

4. The present Second Appeal is disposed of at the admission stage itself, having found that substantial questions of law, which were raised in paragraph No.2 of memorandum of grounds of appeal, in fact, do not constitute substantial questions of law, in view of what would be stated hereinafter.

5. The deceased plaintiff originally filed the suit in O.S. No.350 of 2004 on the file of the II Additional Junior Civil Judge, Chittoor, for cancellation of sale deed, dated 09.07.2001, executed by him in favour of the defendant. That has been the only prayer he pleaded in the plaint.

6. Brief facts are that he was the owner of two extents. The first being Ac.0-15 cents in Sy.No.231/1 and the second being Ac.0.05 cents in Sy.No.230/3, and has been in possession and enjoyment thereof. According to him, the lands covered by Survey Nos.231/1 and 231/2, situated at Ramapuram village belonged to the defendant, but they were wrongly surveyed in the name of the plaintiff at the time of Survey and Settlement. Since an error crept into, the defendant requested the plaintiff to set right the said error by execution of a registered sale deed in his favour, to which the plaintiff agreed.

i) On 09.07.2001, the plaintiff went to Sub-Registrar's office to execute a Settlement Deed in favour of his daughter - Kavitha, where the defendant brought a sale deed and requested the plaintiff to execute the same as promised earlier and, accordingly, the executed the same. So, the entire case of the plaintiff is that the defendant by playing fraud and misrepresentation, got the sale deed executed and, therefore, it is vitiated by fraud and consequently sought to set aside the same.

7. The defendant controverted the allegations stating that sale deed was executed by the plaintiff for consideration and only with a view to defeat his rights, the aforesaid suit is filed and, finally, sought to dismiss the suit.

8. The trial Court framed the main issue touching the relief of cancellation of sale deed. Before the trial Court, the plaintiff besides examining himself as PW.1, also examined the attestors of Exs.A-1 and Ex.A-2 as PWs.2 and 3 respectively, and got marked Exs.A-1 to A-4, which are certified copies of sale deed, dated 9.7.2001, gift settlement deed, plaint in O.S. No.390 of 2002 and deposition of DW.1. Whereas, the defendant besides examining himself as DW.1, has examined the Sub-Registrar, Pakala as DW.3 and another as DW.2 and got marked Exs.B-1 and B-2, which are No.3 Adangal and attested copy of pass book.

9. Before adverting to the findings recorded by the trial Court, it is pertinent to mention that the deceased plaintiff claims 'knowledge' as to the defendant playing fraud and obtaining original of Ex.A-1 in his favour, when the defendant filed suit in O.S. No.390 of 2002 on the file of II Additional Junior Civil Judge, Chittoor, seeking injunction against the deceased plaintiff concerning the property covered by Survey No.230/3, which was pending.

10. The trial Court, on appraisal of evidence, discarded the evidence of PWs.2 and 3 as their evidence is virtually inconsistent and

basing on the evidence of DW.3, that the contents of sale deed would be read over in case Executant is an illiterate and the answer given by PW.2 being an attesor of Ex.A-1 and also being the son of scribe of Ex.A-1 who was no more, that the Sub-Registrar has read over the contents to the parties concerned at the time of registration and that evidence of DW.2 proving passing of consideration and referring to the provisions of Section 34 of the Registration Act, 1908 and drawing presumption under Section 114 of the Indian Evidence Act, 1872 and placing reliance on the decision relied on by the learned counsel for defendant in **Goli Ramaswamy and another v. Narla Jagannadha Rao and others**¹ referring to the proposition that when once execution is proved, recitals of payment of consideration are *prima facie* proof of it against the executants or persons claiming under it, disbelieved the ground of 'fraud' and 'misrepresentation' and dismissed the suit, by judgment, dated 31.01.2007.

11. Aggrieved thereby, the deceased plaintiff preferred a regular Appeal Suit No.39 of 2007 before the IX Additional District Judge, Chittoor, which was disposed of by the Full Additional Charge Court - VIII Additional District Judge, by judgment and decree, dated 30.07.2014, confirming the judgment and decree passed by the trial Court.

12. The learned first appellate Court, on re-appraisal of the evidence, having formulated the points for determination as required

¹. 1961 ALT 240

under Order XLI Rule 31 of the Code of Civil Procedure, 1908, disbelieved the claim of the deceased plaintiff that a mistake occurred during survey, did not appear to be true and opined that such a story was invented for the purpose of avoiding Ex.A-1 - sale deed and to arrive at such an opinion, the appellate Court has drawn probability based on circumstances that no documentary evidence was at all placed by the deceased plaintiff to show that any mistake did occur during survey and settlement as evidenced by any entry in the revenue record, and as to in which year the said mistake has occurred. Yet another probability the learned appellate Court has drawn is that the deceased plaintiff has come up with the present suit only after the defendant has filed suit in O.S. No.390 of 2002 against the deceased plaintiff seeking injunction concerning II item of the plaint schedule property that too two years after the suit. It appears, the learned appellate Court has considered this circumstance as one of the probabilities standing adverse to the case of the deceased plaintiff.

13. The learned appellate Court again referring to Ex.A-2, which was also executed simultaneously along with Ex.A-1, ruled out the ground agitated by the deceased plaintiff that he just believed and signed in original of Ex.A1, at the instance of the defendant, observing that the deceased plaintiff was conscious enough on that day as to what he was doing and the very fact that Ex.A-2 - gift settlement was executed in favour of his daughter is sufficient to disbelieve the ground agitated by him that he was unaware of the

contents of Ex.A-1 coupled with the evidence of DW.2 as to passing of consideration, the learned appellate Court even disbelieved the claim of the deceased plaintiff. The learned appellate Court, therefore, arrived at the conclusion that Ex.A-2 being the latter document, the deceased plaintiff was fully conscious, and at any rate, was not susceptible to any fraud or misrepresentation since, for the purpose of settlement deed, concerned relatives and witnesses would be around the deceased plaintiff and, more particularly, the scribe is one and the same for writing original of Exs.A-1 and A-2. The learned appellate Court referring to the ruling relied on by the learned counsel for the defendant in **Palla Sampath Kumari v. Kintala Venkata Rao and another**² to the effect that it has to be taken that the Sub-Registrar followed the procedure prescribed by Registration Act for registering the relinquishment deed in view of the presumption available under Section 114 of the Evidence Act that official acts are duly performed, and then referring to the bar contained in Section 92 of the Evidence Act, which precludes a party from leading evidence contrary to the terms of a written document, a registered one, to urge that the nature of document is different and that he does not know the contents of the document, was not open to the deceased plaintiff, and permitting a party to so urge would be giving a premium to dishonesty. The appellate Court, however, did not agree with the submission of the learned counsel for the deceased plaintiff and the

². 2003 (6) Alt 637

ruling relied on by him in **Padma Devi v. Soma Devi**³ that registration of document itself is not evidence.

14. Now, turning to the present case, the learned counsel for the appellants herein made an attempt to show that 'fraud' was played in obtaining original of Ex.A-1, but certainly, unsuccessful for the reason it is not as though both the Courts held a concurrent finding, but also in view of the fact that whole burden rests on the deceased plaintiff to prove 'fraud' played or the 'misrepresentation' said to have made by the defendant in the affirmative by leading positive evidence. The evidence of PWs.2 and 3 would lead nowhere as they were attestors to the original of Exs.A-1 and A-2, in view of the embargo embedded in Section 92 of the Evidence Act which equally applies to the deceased plaintiff. It is needless to refer to the authorities. The probabilities basing on which the learned trial Court as well as the appellate Court relied on and recorded the findings are based on appreciation of evidence in accordance with evidentiary rule, and, therefore, do not suffer from any legal infirmity. In case, there is semblance of case in the relief claimed by the deceased plaintiff, certainly, he would not have kept quiet for a considerable time as the suit in O.S. No.390 of 2002 was filed in the year 2002, whereas the deceased plaintiff files the present suit in the year 2004. It is, therefore, clear that only with an oblique motive, filed the present suit

³. AIR 2011 HP 98

without there being any merit at all. Hence, the present second appeal even on merits is liable to be dismissed.

15. The present Second Appeal is, accordingly, dismissed at the admission stage itself confirming the judgment and decree passed by the learned appellant Court. There is no order as to costs.

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

June 16, 2017.
Mgr

A. SHANKAR NARAYANA, J

