

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

SECOND APPEAL NOS. 22, 30, 31, 33, 34, 35 AND 36 OF
2018 AND CIVIL REVISION PETITION NOS. 1245 AND
1255 OF 2018

COMMON JUDGMENT:

These Second Appeals and Civil Revision Petitions are being disposed of by this common judgment as they were filed by the unsuccessful defendants in O.S.No.176 of 1978 and batch of seven cases on the file of the I Additional Senior Civil Judge, Nellore.

2. O.S.No.176 of 1978 was filed on the file of the I Additional Senior Civil Judge, Nellore, by the plaintiffs against defendants 1 to 3 for delivery of possession of plaint schedule property and for recovery of amounts as rent or damages for use and occupation by the defendants upto the date of the suit and for future damages.

3. O.S.No.129 of 1979 was filed for recovery of Rs.3,774/- with interest thereon towards recovery of arrears of rent.

4. O.S.No.130 of 1979 was filed for recovery of Rs.3,805/- with interest towards rent or damages for use and occupation of the premises from 12.9.1969 to 12.7.1974 but the plaintiffs limited their claim for a period of three years.

5. O.S.No.270 of 1988 was filed for permanent injunction restraining the defendants 1 to 4 from interfering with the plaintiffs peaceful possession and enjoyment of the taps shown as 'G' and 'I', the pipelines shown as 'D F G' and 'E I' in the plaint plan. In fact, the said suit was originally filed as O.S.No.964 of 1983 on the file of the District Munsif Court, Nellore, but subsequently transferred to the Court of I Additional Senior Civil Judge, Nellore, which was renumbered as O.P.No.398 of 1988.

6. Similarly, O.S.No.337 of 1983 was filed on the file of the Principal District Munsif, Nellore and on subsequent transfer to the Court of I Additional Senior Civil Judge, it was renumbered as O.S.No.76 of 1989. It was filed to declare the right, title and interest of plaintiff and defendants 5 and 6 in the plaint schedule property and directing the defendants to remove the wall 'E G' and the gate 'F H' and shutter by means of mandatory injunction.

7. O.S.No.351 of 1978 was filed on the file of District Munsif, Nellore, and on transfer to the Court of I Additional Senior Civil Judge, Nellore it was numbered as O.S.No.208 of 1987. It was filed to declare the plaintiffs right, title and interest in the plaint schedule properties and directing the defendants to vacate the plaint schedule property and deliver vacant possession and also

for recovery of Rs.900/- as damages for use and occupation from 1.5.1975 to 30.4.1978.

8. The 3rd defendant in O.S.No.176 of 1978 filed O.S.No.53 of 1982 for partition of plaint schedule properties and for separate possession of plaintiff's 6/25th share and for mesne profits.

9. All the suits were clubbed and common evidence was recorded in O.S.No.176 of 1978. On behalf of plaintiffs, PW1 was examined and Exs. A.1 to A.60 were marked. On behalf of defendants, DWs. 1 to 9 were examined and Exs.B.1 to B.50 were marked. The trial Court, after considering the oral and documentary evidence, decreed O.S.No.176 of 1978 directing the defendants to deliver vacant possession of the plaint schedule property to plaintiffs 2 to 7 and also decreed O.S.No.129 of 1979 in part for Rs.3,600/- towards rent and damages. O.S.No.130 of 1979 was decreed in part for Rs.3,600/- in favour of plaintiffs 2 and 7. O.S.No.53 of 1982, O.S.No.270 of 1988, O.S.No.208 of 1987 and O.S.No.76 of 1989 were dismissed with costs. As against the same, the defendants preferred appeals as follows:

A.S.No.111 of 2006 is preferred against decree and judgment in O.S.No.176 of 1978.

A.S.No.110 of 2006 is preferred against decree and judgment in O.S.No.130 of 1979.

A.S.No.118 of 2006 is preferred against decree and judgment in O.S.No.129 of 1979.

A.S.No.117 of 2006 is preferred against decree and judgment in O.S.No.53 of 1982.

A.S.No.113 of 2006 is preferred against decree and judgment in O.S.No.270 of 1988.

A.S.No.112 of 2006 is preferred against decree and judgment in O.S.No.208 of 1987.

A.S.No.109 of 2006 is preferred against decree and judgment in O.S.No.76 of 1989.

10. The said appeals were also dismissed by a common judgment dated 22.9.2017 and challenging the Appeal Suit Nos.111,109, 118, 110, 117, 113 and 112 of 2006, Second Appeal Nos. 22, 30, 31, 33, 34, 35 and 36 of 2018 respectively were filed.

11. Civil Revision Petition No.1255 was filed by the defendants in the said suit challenging the rejection of the petition filed for condoning the delay of 76 days in filing Review Petition whereas Civil Revision Petition No.1245 of 2018 was filed against the order dated 2.2.2018 rejecting the Review Petition.

12. The case of the plaintiffs in O.S.No.176 of 1978 is that the 1st plaintiff and Pothuru Lakshmi Suseelamma agreed to lease the property for a period of three years with an understanding that defendants have to vacate the schedule premises before 12.1.1970 but the defendants, in spite of the promise, have not delivered possession. They paid the rent of Rs.100/- per month for a period of one year only till 12.10.1969 and thereafter, failed to pay the rents. In view of the same, a notice was issued to the defendants on 10.8.1971 terminating the lease and calling upon the defendants to vacate the premises and deliver the same. The defendants gave a reply with false allegations.

13. It is also stated that the 1st defendant is the wife and defendants 2 and 3 are the children of one late Amara Rosaiah Setty who was doing business at Nellore. He died intestate on 15.7.1966 leaving behind his wife 1st defendant, his sons 2nd and 3rd defendants and Pathi Lalitha Kumari who is daughter through his wife Nagarathnamma. The said Amara Rosaiah Setty was owning a house in the plaint schedule property bearing door Nos.255 and 256 in Bytakummari street, Santhapet, Nellore and he was indebted heavily to his creditors. Pathi Lalitha Kumari, the daughter of Amara Rosaiah setty executed a relinquishment deed on 15.10.1966 after his death

in favour of defendants 1 to 3 by receiving a consideration of Rs.4,000/- Thus, defendants 1 to 3 became the owners of the plaint schedule property. But defendants 2 and 3 were minors and were represented by their natural guardian, the 1st defendant. All the defendants sold the plaint schedule property to 1st plaintiff and to one late Pothuru Lakshmi Suseelamma under a registered sale deed dated 12.1.1967 after obtaining permission from the District Court, Nellore for alienation of shares of defendants 2 and 3 also. At the time of registration of the sale deed, requested the plaintiff to occupy Items 1 and 2 of the plaint schedule property i.e., residence and godown promising to vacate the same and deliver possession to the 1st plaintiff and Pothuru Lakshmi Suseelamma within three years, agreeing to pay Rs.100/- per month.

14. During the pendency of the suit, the 3rd plaintiff died and plaintiffs 5 and 6 were impleaded as legal representatives of 3rd plaintiff. 7th plaintiff was impleaded as a legatee of 1st defendant under a Will.

15. The defendants filed a written statement stating that the defendants and P.Lalitha Kumari succeeded to the estate of Amara Rosaiah Setty and entitled to the properties in door Nos.255 and 256 of Santhapet, Nellore. The execution of relinquishment deed dated 15.10.1966 was admitted. But the

sale of the property to the 1st plaintiff and Pothuru Lakshmi Suseelamma was denied. But they admitted the execution of sale deed dated 12.1.1967 under certain circumstances. It was stated that Amara Rosaiah Setty was doing extensive business in petroleum oil and cement but he suddenly died out of heart attack. Therefore, the creditors of Amara Rosaiah Setty began pressing the defendants for repayment of the debts. The well-wishers of defendants mediated the issue in which the 3rd plaintiff was also one of the mediators. As per the mediation, the house bearing door Nos.255 and 256 are to be sold. A portion of the plaint schedule property i.e., 13 X 10 inches next to the entrance gate should be left and given to defendants for enjoyment by the defendants with absolute rights. Whenever the defendants were in a position to pay a sum of Rs.1,00,000/- to the purchaser, he should re-convey the property to the defendants and get a re-conveyance deed. The 1st plaintiff and Pothuru Lakshmi Suseelamma agreed for the mediation and they agreed to purchase the property subject to the above conditions. A sale deed was executed on 12.1.1967 at request of the 3rd plaintiff in the name of the 1st plaintiff and Lakshmi Suseelamma. The amounts were distributed among the creditors. The property was given possession and the property which was not sold was not given

possession, but the inclusion of the unsold property in the sale deed was only nominal. Thus, the plaintiffs are not entitled for the plaint schedule property as they did not purchase the said property from the defendants. The defendants are in possession and enjoyment of the said property in their own right and they are collecting rents from the property.

16. The 2nd defendant filed a separate written statement stating that there was no joint family property between the widow, sons and daughters of Rosaiah. The sale deed was brought into existence by the advise of the 3rd defendant and it is not supported by any consideration. Hence it is not binding.

17. The 3rd defendant filed a written statement denying the debts by the date of death of Rosaiah Setty and stating that the properties are not joint family properties of his father. There was no necessity for the 1st defendant to alienate the properties and hence, the sale made by the 1st defendant on his behalf during his minority, is not valid.

18. The 7th plaintiff also filed a separate written statement stating that he was willing and prepared to deposit Rs.1,00,000/- and obtain re-conveyance and the same was suppressed by the 3rd plaintiff and his nominee. He sought for considering the application as a counter claim and sought for a direction to the plaintiff to re-convey the property.

19. On the above pleadings, the trial Court framed the following issues:

- “1. Whether plaint schedule property was not actually sold and whether plaint schedule property was nominally included in the sale deed dated 12.1.1967 under the circumstances stated by 1st defendant and 3rd defendant?
2. Whether the 1st plaintiff and Pothuru Lakshmi Suseelamma are the nominees of 3rd plaintiff in the sale deed dated 12.1.1967?
3. Whether there was any oral agreement to reconvey the properties to the defendants for Rs.1,00,000/- as contended by the defendants?
4. Whether the defendants have been the tenants in the plaint schedule property of the 1st plaintiff and Pothuru Lakshmi Suseelamma on monthly rent of Rs.100/- and whether they committed wilful default in payment of rent from 12.10.1969?
5. Whether the Will of Lakshmi Suseelamma dated 11.6.1973 is true, valid and whether 2nd plaintiff became entitled to her interest in the house under the said Will?
6. Whether the suit is bad for mis-joinder of parties and causes of action?
7. Whether the suit is barred by provisions of O.2 Rule-2 of CPC?

8. Whether the suit has not been properly valued and proper court fee has not been paid?
9. Whether the plaintiffs are entitled to the relief of possession as prayed for?
10. Whether the plaintiffs are entitled to rent or damages claimed?
11. Whether the sale deed dated 12.1.1967 is not binding on the 2nd defendant as contended by her?
12. To what relief?

The following additional issues were settled on 20.11.1981:

1. Whether the permission granted by District Court for sale of the suit house in O.P.63/1966 is not valid and not binding on the 3rd defendant?
2. Whether the sale deed dated 12.1.1967 is not binding on 3rd defendant for any of the reasons mentioned in the written statement?
3. Whether 3rd defendant claim of 5/8th share in the suit is true and tenable?
4. Whether third defendant is entitled to raise the above questions in this suit?

The following additional issues were settled on 2.8.2004:

1. Whether the Will dated 9.10.1985 executed by 1st plaintiff is true, valid and binding on 7th plaintiff?

2. Whether 7th plaintiff is competent to continue the suit?
3. Whether the agreements dated 27.12.1966 and 29.12.1966 executed by defendant are binding on 7th plaintiff?
4. Whether the suit is maintainable during pendency of RCC 36/76 on the file of District Munsif, Nellore?
5. Whether 7th plaintiff is entitled to $\frac{1}{2}$ share in the said property?

And also on 15.9.2004

Whether the suit is not maintainable for want of notice under Sec.106 of T.P. Act?"

20. The sale deed was marked as Ex.A16 and the trial Court held that the recitals in the sale deed are determining factors to decide the question as to the nature of the sale deed. It was also noticed that the said sale deed was executed by the 1st defendant and on behalf of defendants 2 and 3 also. The trial Court noticed that it contained several recitals relating to the entire dispute and the circumstances leading to the execution of the sale deed. It was also recited in the sale deed that the purchasers agreed to discharge the debts of Rosaiah Shetty and also obtained endorsement on the promissory notes. The trial Court gave finding that the sale deed was executed with full knowledge about the facts and circumstances and also about the mode of consideration that was passed on to her under the sale deed. The trial Court also recorded that the 1st

defendant admitted the execution of Ex.A.16 sale deed and in view of the same, the defendants are estopped from contending contrary to the recitals. Ultimately, the trial Court held that Ex.A.16 sale deed is an out and out sale but it is not a sale with a condition to re-convey. The trial Court observed that plaint schedule property in O.S.No.53 of 1982 consisted of five items and the property covered by O.S.No.176 of 1978 was shown as item No.3 in the plaint schedule property. 3rd defendant in the said suit was purchaser of item No.1 and defendants 29 to 31 are the purchasers of item No.2 from 4th defendant. The defendants 11 to 13 are purchasers of item No.4 of plaint schedule from 9th and 10th defendants. Defendants 15 and 16 are tenants of item No.2. The trial Court also gave a finding that Amara Rosaiah Setty inherited all his father's property as a sole surviving coparcener and thus, he became absolute owner of the properties inherited by him. The trial Court also observed that DW.9 in his cross-examination on 30.8.2003 deposed that except the suit property covered by O.S.No.176 of 1978, all other items in the said suit were compromised.

21. When the appeals were preferred against the common judgment and decrees of the trial Courts, the lower appellate Court gone into the facts of the case and dismissed the

appeals concurring with the common judgment passed by the trial Court except holding that Ex.B.26 is distinct and different from Ex.A.16 property. In spite of the said difference, ultimately it held that the plaintiffs in O.S.No.208 of 1987 were not entitled for declaration and possession.

22. In view of the said concurrent findings of the facts recorded by both the Courts below, when the Second Appeals were taken up for consideration, learned counsel for the appellants could not point out any question of law much less substantial question of law for admitting the present Second Appeals. Accordingly, all the Second Appeals are dismissed.

23. In view of the dismissal of the application for condonation of delay in filing the Review Petition and the consequential dismissal of Review Petition, out of which, the above Civil Revision Petitions arise, this Court sees no ground to interfere with the said orders and accordingly, the Civil Revision Petitions are also dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

A. RAMALINGESWARA RAO,J

Date: 13.3.2018

KPM