

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.126 of 2008

JUDGMENT:

Assailing the judgment and decree, dated 03.12.2002, in O.S. No.86 of 2000 on the file of XIV-Additional Chief Judge (FTC), City Civil Court, Hyderabad, the present City Civil Court Appeal is preferred under Section 96 of the Civil Procedure Code, 1908 (for short, 'C.P.C.') by the defendant, M.C. Nagabushana Rao.

2. The learned XIV-Additional Chief Judge decreed the suit declaring the title of the plaintiff over House bearing No.1-7-578/22 standing in an extent of 270.66 sq. yards located at Gemini Colony, Zamistanpur, Hyderabad. Aggrieved over the same, the present City Civil Court Appeal is preferred.

3. Heard Sri T.S. Anand, learned counsel for the appellant and Sri Srinivas Chowdary, learned counsel for the respondent.

4. For the sake of convenience, the parties are hereinafter are referred to as they were arrayed in the Original Suit.

5. The facts relevant for adjudicating upon the controversy in the present Appeal are as hereunder:

Basing on the Registered Adoption Deed, bearing Document No.77 of 1980, the plaintiff claimed title over the plaint schedule property as the successor of late Sri M.C. Subba Rao, and for recovery of possession of one room located on the North-western corner of the

suit schedule property and also sought perpetual injunction. According to the plaintiff, his natural father, Krishna Murthy Rao, his adoptive father, M.C. Subba Rao, the defendant-M.C. Nagabhushana Rao and M.C. Subba Rao are the natural brothers being the sons of M. Nagoji Rao. His junior paternal uncle, M.C. Subba Rao, adopted him under the aforesaid Adoption Deed and even shown him as nominee for retiral benefits in his service records. Thus, he claimed that he succeeded to the entire estate and service benefits of his adoptive father, Sri M.C. Subba Rao.

6. According to him, his adoptive father purchased the suit plot under a Registered Sale Deed, dated 14.4.1966 from M/s. Gemini Housing Society, admeasuring 270.66 sq. yards, constructed the suit house having obtained due permission from the Municipal Corporation of Hyderabad and raising loan out of service benefits and thus, it was the self-acquired property of his adoptive father. Subsequent to the demise of his adoptive father, he became the absolute owner and possessor of the pliant schedule property, as his adoptive father had no other issues. His name is also mutated in the municipal records as absolute owner of the suit schedule property. Since on 11.1.2002 at about 8.30 p.m. the defendant along with one Gopala Rao and Chinnaswamy unjustly occupied the said room on the North-western corner of the suit house demanding the plaintiff to give a share in the suit schedule property and also threatened him with dire consequences, he approached the concerned police station and lodged

a complaint and thereafter, got issued a legal notice dated 1.2.2000 requiring the defendant to vacate the room, for which reply dated 9.2.2000 was issued by the defendant with all incorrect allegations stating therein that he got the suit schedule property by virtue of partition deed executed amongst five brothers of the defendant.

7. The defendant resisted the request. He admitted the relationship. He states that the plaintiff's family was economically backward. Whereas, he (defendant) finished Engineering course and joined Central Government undertaking in the year 1962 and by making available amounts from his salary he was instrumental in the economic development of the family, purchased the assets at Kurnool and several other places.

8. He (defendant) claimed that he got constructed the suit schedule house and after purchase of site by him with his independent income for his residence on his return to Hyderabad after his retirement, he used to send amounts to his brother, Subba Rao, for purchasing the land and getting his house constructed as the said Subba Rao was residing at the relevant point of time. The defendant also claims that they never bothered in whose name the property was purchased due to close relationship with the said Subba Rao and the said Subba Rao died without leaving behind any legal heirs. The plaintiff taking advantage, fabricated a false story that he is the adopted son of Sri Subba Rao and laid claim that the suit schedule property is his exclusive property. Thus, the defendant denied the

adoption alleged by the plaintiff and according to him, the adoption never took place as per Hindu rites and customs and it is only a sham document fabricated for the purpose of the present litigation. The plaintiff was never shown as the adopted son of late Sri M.C. Subba Rao in the school and college records and office records of the plaintiff. He denied the allegation that he forcibly entered into the Northern room portion of the plaint schedule property. According to him, he retained one room portion to stay during his visits and other portions are let out. According to him, it is the plaintiff, who has high-handedly taken over the property and with the help of elders and family members could fortunately maintain his possession at least in respect of one room. Therefore, he sought to dismiss the suit.

9. Basing on the aforesaid pleadings, the learned XIV-Additional Chief Judge (FTC) settled the following issues during trial.

- (i) Whether the plaintiff is entitled for declaration that he is the owner of the plaint schedule property being the successor of late Subba Rao as prayed for?
- (ii) Whether the plaintiff is entitled for recovery of possession as prayed for?
- (iii) Whether the plaintiff is entitled for an injunction as prayed for?
- (iv) Whether the land was purchased with the money of the defendant and constructed with the monies of the defendant by Subba Rao?
- (v) Whether the plaintiff is not the adopted son of late M.C. Subba Rao as pleaded in the written statement?
- (vi) To what relief?

10. To substantiate his claim, the plaintiff himself examined as P.W.1 and he got examined Allam Bal Reddy, M. Krishna Murthy

and Smt. M. Jayanthi as P.Ws.2 to 4 and marked Exs.A-1 to A-16 documents. The defendant has not stepped into witness-box and no documents are filed.

11. The trial Court, on appreciation of evidence let in by the plaintiff through P.Ws.1 to 4 and Exs.A-1 to A-16, held that the evidence of P.W.2, an attesor to the Adoption Deed, Ex.A-3, dated 10.10.1980 was proved as nothing is elicited in the cross-examination of P.W.2. To view the Deed of Adoption with suspicion, the trial Court also found that the evidence of P.Ws.3 and 4, who are the natural parents of the plaintiff, would positively establish that M.C. Subba Rao and his wife taken the plaintiff in adoption. Besides the evidence of P.W.2, the trial Court derived probability that there was no necessity to fabricate Ex.A3, as the death of adoptive father had taken place in 1994, that was on 4.10.1994. Thus, the adoption deed came into existence 14 years prior to the demise of the adoptive father of the plaintiff. The trial Court examined this probability in the light of the stand taken by the defendant that Ex.A3 – Adoption Deed was a fabricated document brought into existence to knock away the property belonging to him. The trial Court, then, commented on the conduct of the defendant in not stepping into box to substantiate the stand he has taken that Ex.A3 is a fabricated document brought into existence as the defendant himself contributed the amounts for purchasing the site and constructing house and retaining one room for his stay whenever he used to visit Hyderabad as he was working

elsewhere in Central Government Undertaking by adducing evidence to prove the said pleas thereby the trial Court has recorded findings on all issues against the defendant favouring the plaintiff, and, accordingly decreed the suit for declaration of title and for recovery of possession of room, which room is under the occupation believing the stand of the plaintiff that the defendant is forcibly occupying the room without any right or title to do so.

12. Turning to the grounds agitated in the present Appeal, according to the appellant, the trial Court completely ignored the stand taken by him that he has done Engineering course and employed in Central Government in 1962 and stood as pillar for the economic development of the entire family and out of his personal funds several properties were purchased amongst which the suit schedule property is one and the suit schedule property is always treated as his property by other brothers and the trial Court somehow overlooked it.

13. Further ground agitated by him is that the trial Court did not properly appreciate the evidence on record, though, the evidence of P.Ws.1 to 4 is mutually inconsistent and totally insufficient to prove the valid adoption of the plaintiff and the adoption deed Ex.A3. It is also agitated by him that to prove valid adoption, the plaintiff is obligated with the duty to file school admission entries. In that direction, nothing is placed for perusal of the Court for satisfying the Court, and, therefore, the trial Court ought to have disbelieved the factum of adoption pleaded by the plaintiff. Even it is agitated that no photographs have been filed to show the taking place of adoption

ceremony as per Hindu customs, which the trial Court has completely ignored. Lastly, he agitates that merely because he did not step into box and depose as witness, no ground to hold that the plaintiff could prove valid adoption and that the suit property was acquired by M.C. Subba Rao with his own funds and that the plaintiff succeeded to the suit property after the demise of the said M.C. Subba Rao, and hence, sought to set aside the judgment and decree of the Court below by allowing the appeal.

14. Now, the points that arise for determination are:

- (1) Whether the factum of adoption pleaded by the respondent-plaintiff is proved?
- (2) Whether the respondent-plaintiff is entitled to declaration of title over the plaint schedule property?
- (3) Whether the respondent-plaintiff is entitled for recovery of possession as pleaded?
- (4) Whether the respondent-plaintiff is entitled for perpetual injunction as pleaded?
- (5) Whether the plaint schedule property is self-acquisition of the appellant-defendant?
- (6) Whether the plaint schedule property had fallen towards share of the appellant-defendant as pleaded in his written statement?
- (7) Whether the plea of forgery and fabrication of Ex.A3-Adoption Deed is proved?
- (8) Whether the findings recorded by the trial Court are based on improper appreciation of evidence on record as pleaded by the appellant-defendant, and whether the judgment and decree under challenge are liable to be set aside?
- (9) To what further relief, if any?

Points 1 and 7:

15. These two points are taken up as together as they relate to one and the same aspect and based on appreciation of evidence of P.Ws.1 to 4. P.W.1 is no other than the plaintiff, whereas P.W.2 is an attester, P.W.3 is natural father and P.W.4 is natural mother of the plaintiff.

16. The evidence of P.Ws.1 to 4 becomes material in the present context. They have spoken to the manner in which adoption ceremony was performed i.e., giving and taking child i.e., P.W.1. When they were cross-examined, nothing is brought out to disprove the taking place of adoption ceremony. Had adoptive father M.C. Subba Rao been alive, there would not have been any difficulty and his evidence would have clinched the issue. Even otherwise, the evidence of attester, who is examined as P.W.2, would become significant for the reason his evidence would show execution of Ex.A3 by the natural parents and the adoptive parents. No doubt, school admission records have not been placed by the plaintiff, but merely on that ground, certainly, it cannot be said that the plaintiff failed to prove the factum of adoption. It is not the case of the defendant that the plaintiff was taken in adoption when he was aged more than the age prescribed by the Hindu Adoptions and Maintenance Act, 1956. Therefore, the ground that no school records were placed for perusal of the Court, agitated by the appellant, is of any consequence.

17. Turning to the plea put forth by the appellant that Ex.A3 is outcome of forgery and fabrication and brought into existence to knock away the suit schedule property is concerned, it is to be viewed that serious allegations have been levelled by the appellant and having pleaded as such he is obligated with the duty to discharge the burden by adducing adequate convincing evidence in that regard. The very fact that the defendant has not chosen to step into box and make a statement is sufficient to hold that the said plea remains as a plea without any substantiation in accordance with decisional law as well as evidentiary rule, as proof is wanting. Therefore, the finding recorded by the Court in regard to factum of adoption does not suffer from any legal infirmity.

Points 2, 5 and 6:

18. There is overwhelming evidence let in on behalf of the plaintiff to prove that the property was acquired by the adoptive father. The very fact that Ex.A1 reflects the name of Mahendrakar Chinna Subbarao as the vendee in purchasing the plot on which house mentioned in the plaint schedule standing from M/s. Gemini Housing Society is sufficient to repel the stand of the defendant that he supplied funds and got purchased the plot under Ex.A1. No details at all are forth coming. Even the defendant not stepped into witness box to substantiate contribution of funds or supplying the entire funds necessary for purchase of the plot and construction of house. Even in the cross-examination of P.Ws.1 to 4, nothing is to be found favouring

the defendant. Further, the property tax receipts Exs.A7 and A8 and Notice issued by the Municipal Corporation of Hyderabad intimating mutation effected in the municipal records in place of his adoptive father in Ex.A9 way back in 1995 itself and the Electricity bills standing in the name of the plaintiff under Exs.A10 and A11 and the Bills of water consumption charges under Ex.A12 would all clinchingly establish the right of the plaintiff in the plaint schedule property.

19. Even the partition amongst brothers pleaded by the defendant and the stand that the plaint schedule property had fallen to his share is not evidenced by any material on record. The appellant admittedly did not choose to depose before the Court below nor did he file any partition deed or any other document to show that the plaint schedule property was partitioned amongst brothers and the plaint schedule property had fallen towards his share.

Therefore, these points are held in favour of the respondent and against the appellant.

Points 3 and 4:

20. The findings recorded on the above points would suffice to declare the title of the plaintiff and recovery of possession of the room, which is in the occupation of the appellant herein. Therefore, Points 3 and 4 are also held in favour of the appellant.

Points 8 and 9:

21. In view of cumulative findings recorded, the present Appeal fails, and, therefore, the same is dismissed with costs.

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

A. SHANKAR NARAYANA, J

February 27, 2018.

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