

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

and

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

Appeal Suit No.606 of 2013

Date: 26-02-2018

Between:

Manchukonda Venkata Jagannadham,
S/o late Satyanarayana, aged 73 years, Business,
R/o Plot No.26, Pandurangapuram, Visakhapatnam.

... Appellant

Vs.

Chettipilli Bullamma (died),

Chettipilli Sankara Rao, S/o late Sitayya Ramayya,
aged 72 years, Yandada village, Chinnagadili Mandal,
Visakhapatnam District and 7 others

.. Respondents

For Appellant : Mr. K. Purushotham

For Respondents : Mr. K. Srinivasa Rao

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE T. AMARNATH GOUD

Appeal Suit No.606 of 2013

JUDGMENT: (V. Ramasubramanian, J)

Aggrieved by the dismissal of a suit for declaration of title and for permanent injunction, the plaintiff has come up with the above regular appeal.

2. Heard Mr. K. Purushotham, learned counsel appearing for the appellant and Mr. K. Srinivasa Rao, learned counsel appearing for the respondents.

3. The appellant herein filed a suit in O.S.No.268 of 2006 on the file of VII Additional District Judge (Fast Track Court), Visakhapatnam, praying for a declaration of title and for permanent injunction, in respect of a vacant land of an extent of about Ac.4.60 cents in Survey Nos.33/2, 38/2, 38/3, 39 and 41/5 situated at Yandada village, China Gadili Mandal, Visakhapatnam District. The averments with which the appellant went before the trial Court, *inter alia*, were that his father became the owner of the land in Survey Nos.33/2, 38/2, 38/3, 39 and 41/5, under a decree passed by the Subordinate Judge's Court, Visakhapatnam in O.S.No.65 of 1933; that another person by name Cheruku Dharma Raju became the owner of the other properties under a similar charge decree in O.S.No.64 of 1933; that Dharma Raju relinquished his rights over the properties so purchased by him under the charge decree, in favour of the plaintiff's father under a deed dated 18-08-1941; that

the plaintiff's father thus became the absolute owner of vacant land of an extent of Ac.66.00; that by a registered Will dated 10-04-1960, the plaintiff's father bequeathed the said properties in favour of the plaintiff's mother and he died on 21-08-1977; that the plaintiff's mother in turn executed a Will on 05-05-1996 in favour of the plaintiff bequeathing the suit schedule properties in favour of the plaintiff and she also died subsequently on 13-01-1997; that when the plaintiff went to the suit schedule property to clear the bushes and shrubs in July, 2004, he was prevented by the defendants, forcing the plaintiff to file a suit for bare injunction in O.S.No.847 of 2006; that in the written statement filed in the suit for bare injunction, the defendants denied the title of the plaintiff, forcing the plaintiff to come up with the suit for declaration and permanent injunction, from out of which the above appeal arises.

4. The defendants filed a detailed written statement contending, *inter alia*, that the land covered by Survey No.38/2 belonged to one Sangu Padmanabham and Chettupalli Apparao; that the plaintiff's father never owned the suit schedule properties; that the alleged purchase of some properties by the plaintiff's father under a charge decree in O.S.No.65 of 1933 was not correct; that the land purchased by Cheruku Dharma Raju under a charge decree in O.S.No.64 of 1933 was also not correct; that the 1st defendant actually purchased 2 items of properties measuring an extent of Ac.4.54 cents situated in Survey Nos.33/2, 33/4, 33/3, 38/2, 38/3, 41/4, 41/5, 31/1 and 31/2 from Cheruku Dharma Raju under a registered sale deed dated 22-07-1947; that the said sale deed was

also attested by the plaintiff's father; that after the purchase, the 1st defendant has been in exclusive possession and enjoyment by paying land revenue, to the knowledge of every one including the plaintiff; that the title and possession of the properties by the 1st defendant were never questioned at any time either by the plaintiff's father or his mother or by the plaintiff himself; that after the purchase of the suit properties in the year 1947, the defendants have been cultivating paddy in the land of an extent of Ac.9.00 cents till the year 1980; that thereafter the defendants developed a coconut garden in the land of about Ac.5.00 cents, out of which Ac.3.06 cents is covered by Survey No.38/2; that the defendants have also developed poultry farm in the land in Survey No.38/2 by taking loan from Canara Bank, Visakhapatnam in the year 1985; that after a family partition in the year 1995, the entire coconut garden and poultry farm are in exclusive possession and enjoyment of the 2nd defendant; that in the land covered by Survey Nos.41/5 and 7, the defendants have constructed a terraced building in the year 1978 and also dug a well for agricultural purpose; that after the advent of the Urban Land Ceiling Act in 1976 and the Agricultural Land Reforms Act, the defendants also filed appropriate declarations and final proceedings were also passed, one by the Urban Land Ceiling Officer on 21-04-1982 and another by the Agricultural Land Reforms Tribunal on 05-03-1976; that in the cultivation accounts of the revenue records, the suit properties are shown in the name of the defendants; that after the family partition in the year 1995, certain gift deeds were also executed by the defendants and they are

incorporated in the Pattadar pass books; that up to the year 1994, the defendants have paid land revenue, but could not pay land revenue after the Government stopped collecting the land revenue and that therefore, the suit was liable to be dismissed.

5. On the above pleadings, the trial Court originally framed the following issues for consideration:

- 1) Whether the plaintiff succeeded the suit schedule property as per the Will dt.5.5.1996 of his father?
- 2) Whether the suit schedule property is owned by the plaintiff's father?
- 3) Whether the said Dharma Raju had executed a relinquishment deed dt.18.8.1941 in favour of plaintiff's father or not?
- 4) Whether the extent of Ac.66.00 covered by both documents and the plaintiff's father had been in possession and enjoyment of the said property including suit schedule property?
- 5) Whether the plaintiff is entitled for permanent injunction?
- 6) Whether the plaintiff is entitled for declaration of title?
- 7) To what relief?

Subsequently, the issues were recast and after deleting the unnecessary issues, the following issues were framed:

- 1) Whether the plaintiff is absolute owner of plaint schedule property to declare him as absolute owner?
- 2) Whether the plaintiff is entitled for consequential permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of plaint schedule property?
- 3) To what relief?

6. The plaintiff examined himself as PW.1. He also examined a document writer as PW.2, just for the purpose of confirming that the

plaintiff's mother executed a Will in favour of the plaintiff. A person, who attested the Will executed by the plaintiff's mother on 02-12-1996, was examined as PW.3, for the limited purpose of speaking about the Will.

7. On the side of the plaintiff, 11 documents were filed as exhibits. The first document was a registered deed bearing Document No.52/1934, marked as Ex.A.1. It was in favour of the plaintiff's father. The second document was the certified copy of the registered document No.51/1934 executed in favour of Dharma Raju. The relinquishment deed executed by Dharma Raju, on 18-08-1941 was filed as Ex.A.3. The Will executed by the plaintiff's father and the Will executed by the plaintiff's mother were marked as Exs.A.4 and A.6 respectively. The Death Certificates of the plaintiff's father and mother were filed respectively as Exs.A.5 and A.7. The Legal Heir Certificate was filed as Ex.A.8. A second Will executed by the plaintiff's mother on 02-12-1996 was filed as Ex.A.9. The Encumbrance Certificate in respect of the property and the Suit Registration extract were filed as Exs.A.10 and A.11. The 2nd defendant was examined as DW.1 and 14 documents were filed on behalf of the defendants. The first document was a certified copy of the partition deed dated 16-09-1966. The Settlement Fair Adangal of the village in respect of the suit schedule properties was filed as Ex.B.2. The Land Reforms proceedings were filed as Ex.B.3. The proceedings before the Land Reforms Tribunal were filed as Ex.B.4. Form-1 B was filed as Ex.B.5. The Urban Land Ceiling proceedings were filed as Ex.B.6. The attested copies of the Urban Land Ceiling

proceedings were filed as Ex.B.9. The certified copy of the sale deed of the year 1947 was filed as Ex.B.10. The decreetal order in I.A.No.536 of 2004 in O.S.No.847 of 2004 was filed as Ex.B.11. The fair copy of the order was filed as Ex.B.12. The sale deed dated 22-07-1947 was filed as Ex.B.13 and the proceedings of the Tahsildar dated 20-12-2010 were filed as Ex.B.14.

8. On the basis of the oral and documentary evidence, the trial Court came to the conclusion on Issue Nos.1 and 2 that the plaintiff failed to establish that his father purchased the suit schedule property and that he had also failed to establish his continuous possession. Therefore, the trial Court dismissed the suit, forcing the plaintiff to come up with the above regular appeal.

9. It is contended by the learned counsel appearing for the appellant that the judgment and decree of the Court below are contrary to law, weight of evidence and probabilities of the case and that the Court below failed to consider the execution of one Will by his father under Ex.A.4 and another Will by his mother under Ex.A.9. According to the learned counsel, there was no occasion for the parents of the appellant to execute registered Wills, one in the year 1960 and the other in the year 1996, if they had no semblance of right in the suit schedule property. According to the learned counsel, no one will execute a Will in respect of some property over which they have no claim, just out of imagination. It is further contended by the learned counsel for the appellant that the charge decrees pursuant to which the plaintiff's father and Dharma Raju became the owners of the suit property were not properly appreciated by the

Court below, leading to a gross injustice. Therefore, the learned counsel pleaded that the judgment and decree of the Court below are liable to be reversed.

10. In response, it is contended by the learned counsel appearing for the respondents/defendants that Exs.A.1 and A.2 by themselves did not confer any title upon the plaintiff's father to the suit properties and that even if the Wills allegedly executed by the parents of the plaintiff are taken to have been proved in a manner known to law, they cannot convey any title to the plaintiff, in the absence of a title in favour of the testators of the two Wills. The learned counsel for the respondents also contended that not a single piece of paper was produced by the plaintiff to show that the plaintiff was in possession and enjoyment of the suit property. Therefore, the learned counsel pleaded that the judgment and decree of the Court below do not warrant any interference.

11. We have carefully considered the above submissions.

12. In our opinion, the following points arise for determination in the above appeal.

- 1) Whether the appellant succeeded in establishing that his father acquired title to the suit schedule properties?
- 2) Whether the appellant succeeded in establishing that he was in possession and enjoyment of the suit properties?
- 3) Whether the appellant is entitled to any relief?

13. **Point No.1:**

As we have indicated above, three witnesses were examined on the side of the plaintiff. The evidence of PWs.2 and 3 are of no avail to establish the title of the plaintiff's father to the suit schedule

property. PWs.2 and 3 spoke only about the Wills executed by the plaintiff's father in the year 1960 and the plaintiff's mother in the year 1996. There was no dispute in this case about the succession of the plaintiff. The actual issue was whether the plaintiff's father became the owner of the suit property or not.

14. As we have pointed out earlier, the plaintiff filed 11 documents as exhibits. Only two documents, sought to establish the acquisition of ownership of the suit schedule property by the plaintiff's father. These documents are Exs.A.1 and A.2.

15. A careful look at Exs.A.1 and A.2 would show that these documents were nothing but a registration of a decree for money passed by the Sub-Court, Visakhapatnam in favour of the plaintiff's father, along with a creation of charge on certain properties. In Ex.A.1, it is stated that there will be a decree in favour of the plaintiff's father for payment of Rs.3,693/-, payable with interest @ 0-12-0 (12 annas). The decree further states that the defendants were liable to pay the decree debt in certain specified instalments spread over a period of about 6 years from 1934 to 1940.

16. After granting a decree for payment of money and after granting the facility of payment by instalments over the period of 6 years, the decree registered as Ex.A.1 concludes with a clause that the defendants agreed to make the properties listed in the schedule as security for the due repayment.

17. In other words, Exs.A.1 and A.2 are nothing but decrees for payment of money, which also included a clause for offering certain properties as security for the due repayment of the amounts

indicated in the decree. It is also relevant to note that the decree was actually a compromise decree.

18. There is neither any pleading nor any evidence to show whether there was a failure on the part of the judgment debtors to make payment of the instalments as per several clauses contained in the decree. In any event, a document establishing the mere creation of a security of a property for the discharge of a loan, would not tantamount to a transfer of title to the property. Therefore, the plaintiff, as rightly found by the trial Court, miserably failed to establish the acquisition of title by his father to the suit schedule property. Exs.A.1 and A.2 are of no avail and they do not convey any title in any property to the plaintiff's father.

19. The other documents filed by the plaintiff, in Exs.A.3 to A.11 do not show that the plaintiff's father or mother acquired title to the property. Therefore, the trial Court was right in coming to the conclusion that the plaintiff failed to establish his title or his father's title to the suit schedule property.

20. In contrast, the defendants claimed title to the suit property by virtue of a registered sale deed dated 22-07-1947 filed as Ex.B.13. In the said sale deed, the father of the plaintiff Sri Satyanarayana, was also a witness. If the plaintiff's father had acquired title to the suit property, under Exs.A.1 and A.2 of the years 1933-34, he could not have been a witness to the purchase of the very same properties by the defendants under Ex.B.13.

21. Therefore, it is clear that while the defendants established title to the suit property, the plaintiff failed to establish the acquisition

of title by his father to the suit property. Hence, the Point No.1 arising for determination should be held against the appellant.

22. Point No.2:

Coming to the question of possession, the defendants filed a series of documents such as (1) Settlement Fair Adangal; (2) Form-1 B; (3) Proceedings before the Urban Land Ceiling Authority; (4) Proceedings before the Land Reforms Tribunal and the proceedings of the Tahsildar. Thus, by a series of documents of the years 1947 to 1994, the defendants have shown their continuous possession of the suit property.

23. In contrast, not a single piece of paper is produced by the appellant/plaintiff to show his possession. He did not file either a Pattadar pass book or a copy of the Adangal or a tax receipt.

24. It must be observed that the appellant/plaintiff claimed title to a vast extent of about Ac.66.00 cents. If that is so, and if the total extent of land had been acquired in the years 1933-34 by the plaintiff's father was so much, the holding must have attracted either the Agricultural Land Reforms or the Urban Land ceiling or both. The appellant/plaintiff could not produce any of these proceedings or even tax receipts. Therefore, the appellant could not even prove possession of the suit schedule property, and hence, the finding of the trial Court even on this aspect is unassailable. Hence, the Point No.2 arising for determination is also to be decided against the appellant.

25. In view of the above, the judgment and decree of the trial Court are unassailable and the appeal deserves to be dismissed.

Accordingly, the appeal is dismissed. Considering the facts and circumstances, the parties are directed to bear their own costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

T. AMARNATH GOUD, J

Date: 26-02-2018

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