

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

SA.No.283 of 2018

JUDGMENT :

This Second Appeal is preferred challenging the judgment and decree dt.19.12.2017 in A.S.No.65 of 2006 on the file of IX Additional District Judge, Chittoor, reversing the judgment and decree dt.18.04.2006 in O.S.No.163 of 1990 on the file of Principal Senior Civil Judge, Chittoor.

2. The appellants are legal representatives of the sole plaintiff who died pending First Appeal.

O.S.No.163 of 1990 :

3. The plaintiff filed the above suit for specific performance of an agreement of sale Ex.A.1 dt.25.03.1990, and for an injunction restraining the defendants/respondents from interfering with their alleged peaceful possession and enjoyment of the plaint schedule properties.

4. It was the case of plaintiff that Ex.A.1 – Agreement of Sale was executed in his favour by 1st defendant on 25.03.1990 agreeing to sell the plaint schedule properties for a sum of Rs.45,000/-, that Rs.25,000/- was paid as advance, and the balance of sale consideration of Rs.20,000/- was to be paid on or before 24.09.1990; and that prior to the execution of the Ex.A.1, the plaintiff had taken the plaint schedule property on lease from the 1st respondent on an oral lease on a monthly rent of Rs.2,000/-.

5. The plaintiff contended that the last payment was made on 15.01.1990 under a receipt, and on 15.09.1990 the 1st defendant received Rs.11,000/-

being the balance of sale consideration, and extended time for execution of registered sale deed by (03) months by means of an endorsement Ex.A.2 made on the agreement.

6. The plaintiff contended that he was ready and willing to perform his part of the contract by paying the balance of Rs.9,000/-. He contended that defendant nos.2 and 3 are minor sons of one Srinivasulu Naidu, S/o.Venkatappa Naidu, the elder brother of 1st defendant, and the 1st defendant was dependent on Srinivasulu Naidu and his brother Ramachandra Naidu for food, etc, since the 1st defendant's wife had deserted him. He contended that on 16.10.1990, Srinivasulu Naidu attempted to trespass into the suit schedule properties claiming to have obtained registered sale deeds in favour of defendant nos.2 and 3 from the 1st defendant, that this was prevented with great difficulty, and on verification, he came to know that the 1st defendant had executed registered sale deeds Ex.B.8 dt.20.09.1990 and Ex.B.9 dt.01.10.1990, in favour of defendant nos.2 and 3. He contended that the sale deeds were nominal and collusive and were intended to defraud the plaintiff's right under Ex.A.1, that defendant nos.2 and 3 had no capacity to raise the money, and their father Srinivasulu Naidu had no interest to obtain sale deeds in the name of his minor sons. He further contended that he had first option to purchase the property as a tenant under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, and the defendant nos.2 and 3 and their father wanted to knock away the plaint schedule properties.

7. The 1st defendant filed a written statement stating that he is the owner of the suit schedule property, but denied that he had executed Ex.A.1 or

received any payment thereon. He contended that Ex.A.1 as well as Ex.A.2, endorsement thereon were both fabricated and forged. He also denied that the plaintiff was a tenant under him for seven years prior to Ex.A.1. He stated that he conveyed the plaint schedule property to defendant nos.2 and 3 under Exs.B.8 and B.9 who had offered higher price than the plaintiff.

8. The defendant nos.2 and 3 adopted the written statement of the 1st defendant.

9. The trial court framed ten issues:

“(1) Is the suit agreement dt.25.03.1990 is true, valid and binding on the 1st defendant ?

(2) Is the receipt dt.15.01.1990 filed along with the plaint, a true and genuine document ?

(3) Did the plaintiff pay Rs.25,000/- as advance of sale consideration to 1st defendant on the date of suit agreement and did he pay a further sum of Rs.11,000/- on 15.09.1990 as alleged in the plaint?

(4) Was the plaintiff in possession of the suit land as a tenant since 7 years prior to the filing of the suit and was he in possession of the same on the date of suit ?

(5) Are the two sale deeds dt.20.09.1990 and 01.10.1990 in favour of the defendant nos.2 and 3 nominal documents and are they inoperative and void in law ?

(6) In any event, is the plaintiff entitled to specific performance of the suit contract of sale not only by 1st defendant but also by the defendant nos.2 and 3 the subsequent purchasers ?

(7) Is the plaintiff entitled to the permanent injunction prayed for by him ?

(8) Is the plaintiff sole person owning the remaining extent in the suit survey number or are there others also owning some extents in its apart from the 1st defendant ?

(9) *Are the defendant nos.2 and 3 the bona fide purchasers of the plaint schedule property for value and were they put in possession of the same on the dates of the sale deeds in their favour ?” and*

(10) *To what relief ?”*

10. The plaintiff examined PWs.1 and 2, and marked Exs.A.1 to A.5. The defendants examined DWs.1 to 5, and marked Exs.B.1 to B.9.

11. By Judgment and Decree dt.11.07.1997, the Trial Court decreed the suit.

12. The 1st defendant filed A.S.No.86 of 2001 before the District Judge, Chittoor.

13. The said appeal was disposed of on 22.04.2004, setting aside the judgment and decree dt.11.07.1997 in O.S.No.163 of 1990, and the matter was remanded to the Trial Court with a direction to send all the documents available on record with the admitted and disputed signatures of 1st defendant to a handwriting expert of the State Forensic Science Laboratory, Hyderabad for comparison and opinion, at the cost of the 1st defendant, and then to give a reasonable opportunity to both the parties to lead further evidence, if they so desire.

14. After remand, Exs.C.1 and C.2 (the Vakalat of the 1st defendant in the suit and the served summons of the 1st defendant) were marked along with Ex.C.3, the handwriting expert's opinion.

15. After remand, arguments were again heard and the Trial Court again decreed the suit on 18.04.2006 and directed defendant nos.2 and 3 to execute regular registered sale deed in favour of plaintiff in respect of the suit schedule property by receiving balance of consideration of Rs.9,000/-

deposited into the Court. It also granted a permanent injunction as prayed for.

16. The trial court held that the evidence of DW.1 is not sufficient to come to the conclusion that Exs.A.1 to A.3 were forged documents. It held that the reasons given by the expert CW.1 did not fortify the conclusion that the questioned signatures were forgeries. It therefore held that Ex.A.1 was true, valid and binding on the 1st defendant and that the plaintiff had paid Rs.25,000/- as advance to the deceased-1st defendant on the date of Ex.A.1 and also Rs.11,000/- under Ex.A.2 on 15.09.1990. Consequently, it held that Exs.B.8 and B.9, executed by 1st defendant, were nominal documents, and they are not *bona fide* purchasers of the plaint schedule property. It also held that the plaintiff was in possession of the plaint schedule property as a tenant even prior to the filing of suit.

17. Assailing the same, the defendants filed A.S.No.65 of 2006 before the IX Additional District Judge, Chittoor.

18. By Judgment and Decree dt.19.12.2017, the lower Appellate Court allowed the Appeal, setting aside the Judgment and Decree of the Trial Court, thus, dismissing the suit.

19. The lower Appellate Court held that PW.2 is the scribe of Ex.A.2 and also the attesor of Ex.A.1; that except the evidence of PW.2 and the plaintiff, there was no other evidence put forth by plaintiff to prove Ex.A.1; but, however, relied on evidence of DW.3, the scribe of Ex.A.1 clearly deposed that DW.1 did not execute Ex.A.1, and that in his presence the attestors did not attest the document, and that the person who signed in

Ex.A.1 in his presence is not the 1st defendant. It held that the evidence of expert witness CW.1, that Ex.A.1 is a traced forgery can be relied upon, and Ex.A.1 is therefore not proved to be valid and binding on the defendants. It further held that before a suit for specific performance is filed there ought to be demand for performance, though no legal notice was required, but there is no evidence of any such oral demand being made by the plaintiff on the 1st defendant. It also placed reliance on Ex.B.3, a legal notice dt.06.09.1990, got issued by the 1st defendant stating that 1st defendant did not execute any document in favour of the father of plaintiff and his other brothers, and held that if he really executed Ex.A.1 in favour of plaintiff, he would not have issued the said notice to his brothers as well as the father of plaintiff. It held that this indicated that the 1st defendant, from the beginning, took a stand that he never executed Ex.A.1 agreement. It also held that though the plaintiff may be in possession of the property on the date of filing of suit, but since he is not the owner of the property, no injunction can be granted in his favour.

20. Assailing the same, the present Second Appeal is filed.

21. Heard Sri T. C. Krishnan, counsel for appellants who are legal representatives of deceased-plaintiff and Sri V.S.R. Anjaneyalu, counsel for respondent nos.2 and 3 / defendant nos.2 and 3.

22. The 1st defendant appears to have been died during pendency of A.S.No.65 of 2006.

23. It is the contention of counsel for appellants that the lower appellate court could not have relied on Ex.C.1 (report of the handwriting expert

CW.1), to reverse the decree granted by the Trial Court. It is also further contended that the evidence of attesor PW.2 was not properly examined and his evidence ought to have been believed by the lower appellate Court instead of evidence of the scribe of Ex.A.1, who is DW.3.

24. These contentions are refuted by counsel for respondents.

25. From the facts narrated above, it is clear that there is a dispute about the very execution of Exs.A.1 and A.2 endorsement thereon by the deceased-1st defendant in favour of deceased-sole plaintiff. While the Trial Court rejected the expert evidence that Ex.A.1 is a traced forgery, the lower Appellate Court accepted the evidence of the expert, CW.1.

26. In my considered opinion, the matter cannot be simply looked at only from the perspective of expert evidence as was done by the Trial Court, but the evidence of plaintiff's witnesses as well as defendant's witnesses also needed to be considered along with that of the expert, as was done by the lower appellate court.

27. The Trial Court was of the opinion that the evidence of PW.1 (Plaintiff) and PW.2 (attesor of Ex.A.1), coupled with that of DW.3 (the scribe of A.1), would prove the execution of Exs.A.1 to A.3. But, admittedly, DW.3 (the scribe of Ex.A.1), in his cross-examination, stated that the 1st defendant was not the person who executed Ex.A.1.

28. Though the Trial Court did not accept the evidence of DW3, the lower appellate Court placed reliance on it apart from the expert evidence of CW.1 that Ex.A.1 is a traced forgery. In addition, it also placed reliance on Ex.B.3 dt.06.09.1990, a legal notice, got issued by the 1st defendant to his brothers

and also to the father of plaintiff. As rightly held by the lower Appellate Court, Ex.B.3 contains a denial by the 1st respondent that he did not execute any document in favour of his brothers including the father of plaintiff, and that if he really did execute Ex.A.1, he would not have issued Ex.B.3-Legal Notice. The Trial Court, though referred to Ex.B.3, did not consider it in the proper perspective as was done by the lower Appellate Court.

29. It is settled law that interference under Section 100 C.P.C. is permissible only if a finding of fact is perverse or based on no evidence. No appreciation of evidence can be done in the exercise of jurisdiction under Section 100 C.P.C.

30. In the light of this settled legal position, I am of the opinion that the lower Appellate Court's appreciation of evidence cannot be said to be perverse, warranting interference by this Court under Section 100 C.P.C.

31. Therefore I find no substantial question of law arising for consideration in the Second Appeal. Accordingly, the Second Appeal is dismissed at the stage of admission. No order as to costs.

32. As a sequel, miscellaneous applications pending if any, in this Second Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-04-2018

Ndr/*