

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Second Appeal No.400 of 2018

JUDGMENT:

This second appeal arises out of concurrent judgments and decrees of both the Courts below, granting a decree of recovery of possession in favour of the respondent-plaintiff.

2. Heard Mrs. T.M. Vani, learned counsel for the appellant.

3. The respondent-plaintiff filed O.S.No.603 of 2010 on the file of II Additional Senior Civil Judge, Vijayawada, for recovery of possession of the suit schedule property. The case of the respondent-plaintiff in the suit was that the suit schedule property originally belonged to one Boppuri John David; that he sold the same to the plaintiff's mother under a registered sale deed dated 11-01-1978; that after the death of the plaintiff's mother, the suit schedule property was inherited by the plaintiff, his brother, his sister and the father; that all of them executed a relinquishment deed dated 15-05-1991, releasing and relinquishing their right in the suit schedule property in favour of the respondent-plaintiff; that the appellant/defendant was the illegitimate son of the brother of the plaintiff's mother; that the defendant's father by name James Robins filed a suit in O.S.No.888 of 1999 against the plaintiff and his father for a declaration and injunction in respect of the very same suit property, but the same was dismissed on 10-10-2000; that the appeal filed by the defendant's father in A.S.No.19 of 2001 was dismissed on 25-02-2005; that despite the same, the defendant, due to political influence, occupied the suit schedule property in the first

week of August, 2008, forcing the respondent-plaintiff to come up with the suit.

4. Interestingly, the appellant-defendant admitted that the suit schedule property belonged to the plaintiff's maternal grandfather and that the maternal grandfather executed a sale deed in favour of the plaintiff's mother. But the appellant/defendant claimed that the sale deed was executed just for the purpose of obtaining loan from the bank on the understanding that the plaintiff's mother will reconvey the property to the grandfather.

5. Before the trial Court the respondent-plaintiff filed (1) the sale deed dated 11-01-1975 in favour of his mother as Ex.A.1, (2) the relinquishment deed dated 25-03-1991 in favour of his mother as Ex.A.2, (3) the certified copy of the judgment and decree in O.S.No.888 of 1999 as Ex.A.3, (4) certified copy of the judgment and decree in A.S.No.19 of 2001 as Ex.A.4, (5) a series of original tax receipts as Ex.A.5, and (6) the allotment letter of Mandal Revenue Officer, Vijayawada as Ex.A.6.

6. The respondent-plaintiff examined himself as PW.1 and 2 other witnesses as PWs.2 and 3. The appellant/defendant examined himself as DW.1 and examined 2 other witnesses.

7. A series of tax demand notices issued in favour of the defendant's father were filed as Exs.B.1 to B.3. Tax receipts were filed as Ex.B.4 and B.5. Attachment notices were filed as Ex.B.6. Enumeration record of the defendant's family, Electricity bills, Gas service bill, voter card and ration card were filed as Exs.B.8 to B.12. About 5 documents were also filed as Ex.X.1 to X.5.

8. On the basis of the evidence on record, the trial Court came to the conclusion that the plaintiff had proved his right and title to the property in question and hence decreed the suit as prayed for. The Appellate Court confirmed the same, forcing the defendant to come up with the above second appeal.

9. I do not find any substantial question of law arising in the above second appeal. As rightly pointed out by the Courts below, Ex.A.1 is a 30 years old document. It is a sale deed executed by John David (maternal grandfather of the plaintiff) in favour of the plaintiff's mother. Even the admitted case of the appellant-defendant is that such a sale deed was in fact executed.

10. Once it is conceded by the appellant-defendant in his own pleadings (i) that the property originally belonged to the plaintiff's maternal grandfather and (ii) that the plaintiff's maternal grandfather executed a registered sale deed in favour of the plaintiff's mother under Ex.A.1, the battle was half won for the plaintiff. The remaining half was to be won, by showing how from his mother the plaintiff got title.

11. The only defence taken by the appellant-defendant is that the sale deed Ex.A.1 was a nominal document executed by the plaintiff's maternal grandfather to enable the plaintiff's mother to secure a loan on the understanding that the property will be reconveyed. But there is no evidence to show this. A person, who takes a plea that a registered sale deed was not intended to be acted upon, should be able to prove that his case would fall under

any of the exceptions to Section 92 of the Indian Evidence Act, 1872. The appellant-defendant could not prove any such thing.

There are no substantial questions of law arising for consideration of this Court. Hence, the second appeal is dismissed. No costs.

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

V. RAMASUBRAMANIAN, J

Date: 29-06-2018

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