

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.464 OF 2010

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 24.11.2009 passed in A.S. No.235 of 2006 on the file of the XX Additional Chief Judge, City Civil Court, Secunderabad (for short, 'first appellate court'), wherein the first appellate court confirmed the judgment and decree dated 07.11.2006 passed in O.S. No.518 of 2004 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad (for short, 'the trial court'). The respondent herein filed O.S. No.518 of 2004 for eviction of the 1st appellant herein from the suit schedule property and hand over the vacant possession to her and to award mesne profits @ Rs.3,000/- per month from the date of suit till the date of delivery of vacant possession.

2. The appellant-defendant died during pendency of the Second Appeal and the appellants 2 to 4 are brought on record as his legal representatives, vide order dated 22.06.2016 in S.A.M.P. No.2453 of 2014.

3. Heard the learned counsel for the 1st appellant-defendant and the learned counsel for the respondent-plaintiff, apart from perusing the material on record.

4. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court.

5. Learned counsel for the 1st appellant-defendant would contend that the suit schedule property was purchased by late M.B.Maruthi Rao-father of the defendant for a valuable sale consideration in the name of the plaintiff under Ex.A.1-registered sale deed dated 13.12.1961; both the Courts below have not appreciated all the facts and circumstances of the case and the trial Court

erroneously decreed the suit for eviction and the same was confirmed by the first appellate court; the trial Court ought not have decreed the suit; the defendant is the joint owner and possessor of the suit schedule property; without there being a decree for partition, the defendant is not liable to dispossess from the suit schedule property; the purchase of the suit schedule property under Ex.A.1 is not conclusive proof; the defendant being joint interest holder, he cannot be evicted from the suit schedule property; the findings of both the Courts below do not stand for any reason; and ultimately, prayed to set aside the judgments and decrees of both the Courts below by allowing the Second Appeal.

6. On the other hand, learned counsel for the respondent-plaintiff would contend that the trial Court as well as the first appellate court have elaborately dealt with Ex.A.1-registered sale deed executed in favour of the defendant and held that the plaintiff is the owner of the property; there is no single document to show that the suit schedule property was purchased by the father of the defendant in the name of the plaintiff; both the Courts below did not commit any error; no substantial question of law do arise for consideration; all factual aspects are raised in the Second Appeal; and ultimately, prayed to dismiss the Second Appeal by confirming the judgments and decrees of both the Courts below. In support of his contentions, he relied on a decision of the Hon'ble Supreme Court in **Pawan Kumar Gupta v. Rochiram Nagdeo**¹.

7. While admitting the Second Appeal on 20.05.2010, the following substantial questions of law are framed:

(1) Whether an admission of plaintiff with regard to the reason for the purchase of suit schedule property is not conclusive proof to hold that the suit property is a joint property?

(2) Whether admitted facts require any further proof to disprove the case of the plaintiff?

¹ (1999) 4 SCC 243

8. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the relevant pleadings of the parties.

(a) The plaintiff filed the suit for eviction of the defendant from the suit schedule property, which is a portion in the first floor admeasuring 6000 square feet bearing House No.9-3-474 and 475 (old) and New No.417, situated at Abdul Nabi Street, Regimental Bazaar, Secunderabad. The plaintiff averred in the plaint that she is the absolute owner of the suit schedule property having purchased under Ex.A.1-registered sale deed dated 13.12.1961 and the defendant is her second son and he was permitted to reside in the part of the first floor consisting of 4 rooms for the last six years and the plaintiff and her two unmarried daughters are residing in the first floor, whereas the ground floor is let out to the tenants. As the plaintiff suffering from ailments, she is totally depending upon her unmarried daughter-Vijayalakshmi who is rendering her priceless services to her. But the defendant and his wife have not shown any concern about her ill-health and instead developed jealous against her unmarried daughter by expecting that she would give her properties to her unmarried daughter and also used several unlawful means and coercive acts to force the plaintiff to transfer the suit schedule property in his favour and he and his wife used to pick up unnecessary quarrels and subjected to harassment even by causing injury and twisting her right hand. Ultimately, the plaintiff gave a report to the police on 09.07.2002 and the defendant undertook not to give any trouble in future and he would not claim any share in the suit schedule property and thereafter, the plaintiff withdrawn the complaint. Some time thereafter, the defendant again resumed his habit of picking up quarrels with the plaintiff and her unmarried daughter. Finally, the plaintiff gave a legal notice on 05.02.2004 by calling upon the defendant to vacate the suit schedule house immediately and to

pay damages @ Rs.3,000/- per month for illegal occupation, but the defendant did not vacate the property.

(b) The defendant filed written statement denying all the allegations except admitting his relationship with the plaintiff and they are mother and son. The defendant contended that the suit schedule house was purchased by his father-M.B.Maruthi Rao out of the income received by him by selling away the joint plot which was purchased by him earlier in Padmarao Nagar, but got registered the sale deed in the name of the plaintiff. The plaintiff had no money to her own to purchase the suit house and the said property was purchased in the name of the plaintiff only for the benefit of the joint family. The plaintiff held the property in trust for the benefit of the joint family. The defendant has been residing in the portion of the suit schedule house as of right, as he is having 1/3rd share in the property. The plaintiff by taking undue advantage of having property in her name has been harassing her both sons including the defendant. The defendant is not liable to vacate the suit schedule property and also not liable to pay any damages much less Rs.3,000/- per month.

(c) The trial Court basing on the pleadings of both sides, framed the following issues for adjudication of the suit:

- (1) Whether the plaintiff is entitled for vacant possession of the suit schedule property from the defendant?
- (2) Whether the plaintiff is entitled for damages @ Rs.3,000/- per month from March, 2004 to July, 2004 from the defendant?
- (3) Whether the plaintiff is entitled for mesne profits @ Rs.3,000/- per month from the date of suit till delivery of possession of suit schedule property from the defendant?
- (4) Whether the plaintiff is entitled for costs of the suit?
- (5) To what relief?

(d) In order to establish her case, the plaintiff deposed as P.W.1 and got marked Ex.A.1-certified copy of registered sale deed dated 13.12.1961, Ex.A.2-office copy of legal notice dated 28.09.2001, Ex.A.3-acknowledgment, Ex.A.4-legal notice dated 05.02.2004, Ex.A.5-retuned registered notice dated 07.02.2004 and Ex.A.6-market valuation report dated 26.06.2004. On the other hand, the defendant deposed as D.W.1 and got examined his brother-M.Kameshwar Rao as D.W.2 but no documents were marked on his behalf.

(e) The trial Court after considering the entire evidence on record, partly decreed the suit directing the defendant to vacate the portion of the suit schedule house and deliver the physical and vacant possession of the same to the plaintiff within one month from the date of decree and further observed that the plaintiff is entitled for mesne profits by filing separate proceedings, in case the defendant fails to deliver the vacant possession of the suit schedule house to the plaintiff within one month from the date of passing of decree. Aggrieved by the said decree and judgment, the defendant preferred A.S. No.235 of 2006 before the first appellate court. The first appellate court, after appreciating the entire evidence on record, was pleased to dismiss the appeal by confirming the decree and judgment passed by the trial Court. Questioning the dismissal of the first appeal, the defendant preferred the Second Appeal raising the substantial questions of law referred to supra.

9. The record reveals that the original suit was filed in the year 2004. On that day, the age of the defendant was shown as 45 years. It goes to show that the defendant was only a kid on the date of execution of Ex.A.1-registered sale deed. The trial Court had elaborately dealt with the aspect with regard to the entitlement of the possession of the plaintiff over the suit schedule property.

10. In **Pawan Kumar Gupta's** case relied on by the leaned counsel for the plaintiff, it is held as follows:

"All the above three premises adverted to by the High Court are unsupportable. The clear pleading of the plaintiff is that he purchased the suit property as per Ext.P-11 sale deed. The burden of proof cannot be cast on the plaintiff to prove that the transaction was consistent with the apparent tenor of the document. Ext.P-11 sale deed contains the recital that the sale consideration was paid by the plaintiff to Narain Prasad, the transferor. Why should there be a further burden of proof to substantiate that the recitals in the document are true? The party who wants to prove that the recitals are untrue must bear the burden to prove it."

11. In view of the decision referred above, when there is specific mention with regard to the mode of payment of sale consideration, the transferee cannot be burdened to prove the same. In the evidence of P.W.1, there is specific mention with regard to the payment of sale consideration for the suit schedule property purchased by her under Ex.A.1 and no other opinion can be substituted. There is no evidence, except the evidence of D.W.1 and D.W.2, to substantiate the contention that the sale consideration was paid by the father of the defendant, having sold some other property. D.W.1 and D.W.2 are real brothers, who were kids on the date of Ex.A.1-sale deed dated 13.12.1961. They set up a false case of property of sale consideration by their father. Both the Courts below while dealing with the subject matter had elaborately dealt with the validity of Ex.A.1-sale deed and held that the sale consideration was paid by the plaintiff and also negated the contentions raised by the defendant that the suit schedule property is a joint family property and it is shared by him.

12. It is appropriate to state that under Section 100 of the C.P.C., the jurisdiction of the High Court to interfere with the judgment of the Courts below is

confined to substantial question of law. The findings with regard to the factual aspects by the first appellate court are final. Those findings of facts are not amenable to the jurisdiction of this Court by way of Second Appeal. More so, when there is no substantial question of law. In the circumstances of the case, this Court cannot re-appreciate the evidence and arrive at a different conclusion. Neither inadmissible evidence has been considered nor admissible evidence not acted upon. In view of the facts and circumstances of the case, the findings of the Courts below are not perverse. So, no re-appreciation of entire evidence is warranted in this Second Appeal and further, no question of law much less substantial question of law arise for determination in this Second Appeal. Therefore, the Second Appeal is devoid of merit and it is liable to be dismissed.

13. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 24.11.2009 passed by the first appellate court in A.S. No.235 of 2006. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 02.08.2018
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Dr. SHAMEEM AKTHER, J