

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.1078 OF 1999

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 dated 30.06.1999 in A.S. No.67 of 1994 on the file of the District Judge, Mahbubnagar (for short, 'first appellate court'), wherein the first appellate court, while dismissing the appeal, confirmed the judgment and decree dated 31.08.1994 passed in O.S. No.409 of 1989 on the file of the District Munsif, Mahbubnagar (for short, 'the trial court').

2. The appellants herein are the plaintiffs and the respondents 1 to 4 herein are the defendants before the trial Court in the original suit. Respondents 5 to 7 herein are added, *vide* the order dated 24.09.2009 in C.M.P. No.1694 of 2009, as the legal representatives of the 2nd respondent-defendant.

3. Heard the learned counsel for the appellants-plaintiffs, apart from perusing the material on record. No representation on behalf of the respondents-defendants.

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

5. While admitting the Second Appeal on 21.01.2000, this Court framed the following substantial questions of law for consideration:

(a) Whether the judgment in a suit for injunction operates as *res judicata* in a suit for declaration of title and injunction?

(b) Whether the findings of the Courts below with regard to the rights of the 1st plaintiff as a illeto adoptee are vitiated by taking into consideration the judgments in O.S. No.56/78 and the appeals arising therefrom?

(c) What are the rights of an illeatom son-in-law in respect of the properties of the family of the father-in-law, particularly in view of the fact that there is no other male member?

6. 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 1st plaintiff is the husband of the 3rd defendant. The 1st defendant is the first wife of the son of the 1st plaintiff. The 2nd defendant is the second wife of the son of the 1st plaintiff. The father of 2nd plaintiff by name- Mandadi Bal Reddy alone is the son of the 1st plaintiff. Defendants 1 and 2 are the wives of Mandadi Bal Reddy. The 1st plaintiff is the owner of the suit schedule-A, B and C property. The 1st plaintiff was taken adoption as the illatom son-in-law to the family of the 3rd defendant, which was agreed by the father of the 3rd defendant that the entire agricultural lands and other immovable properties would be inherited by the 1st plaintiff. so, the 1st plaintiff alone is the owner of the suit schedule lands. The 3rd defendant under misconception executed two registered gift deeds in respect of the plaint-C schedule lands equally in favour of the defendants 1 and 2. The 1st defendant got mutated the gifted lands in her name with the collusion of the petwari. Plaint-A schedule lands are in the name of the 1st defendant in the pahanies. Plaint-B schedule lands were gifted to the 2nd defendant, but the same were patta lands in the name of the 3rd defendant. The plaint-C schedule lands were the original lands which ought to be made patta in the name of the 1st plaintiff. The 1st plaintiff is the real and absolute owner of the plaint-C schedule lands. Since the date of adoption as the illatom son-in-law, the 1st plaintiff alone has been cultivating the suit schedule lands as the owner by paying the land revenue to the Government and they are in possession and enjoyment of the 1st plaintiff. Inadvertently, the suit schedule lands have been mutated in the name of the 3rd defendant in the revenue records, but the 3rd defendant had never exercised ownership rights

over the suit schedule lands at any time and the patta is only nominal. The son of the 1st plaintiff namely Mandadi Bal Reddy married to the 1st defendant and they begot a daughter. The 1st defendant had contracted with T.B. disease and started living separate from her husband, i.e., the son of the 1st plaintiff and thereafter went to her parents' house at Kurmalingampalli. The 1st plaintiff and his son made many attempts to bring her back, but in vain. Before the family elders, the 1st defendant had given consent that her husband, i.e., the son of the 1st plaintiff could get second marriage. So, the son of the 1st plaintiff by name Mandadi Bal Reddy got married the 2nd defendant. Thereafter, the 1st defendant filed criminal complaint against her husband for the offence under Section 494 I.P.C. before the Judicial Magistrate of First Class, Wanaparthi, which was registered as C.C. No.37 of 1976 and thereafter the relatives of the 1st defendant compelled her to effect compromise. The defendants 1 and 2 are relatives to each other. The two gift deeds executed on 15.04.1976 by the 3rd defendant in favour of the defendants 1 and 2 were obtained under misrepresentative coercion and the 3rd defendant was not aware of the fact that they are gift deeds. The 1st defendant filed O.S. No.56 of 1978 before District Munsif Court, Wanaparthi, against the 1st plaintiff, son of the 1st plaintiff and the defendants. The patwari of the village was actively supported the 1st defendant, got mutated the gift lands in her name in the revenue records and shown the name of the 1st defendant in cultivation column of pahani. So, O.S. No.56 of 1978 filed by the 1st defendant was decreed. Aggrieved by the said judgment and decree, the 1st plaintiff filed A.S. No.65 of 1981 and the same was dismissed on 13.08.1982 and, thereafter, S.A. No.151 of 1982 was filed before this Court and the same was also dismissed in the year 1987. Since 1976, the defendants 1 and 2 were never in possession of the suit schedule lands and the 1st plaintiff has been cultivating the suit schedule lands. The 3rd defendant was not the owner and possessor of the suit schedule lands on the date of execution of gift deeds in favour of the

defendants 1 and 2, which are not binding on the 1st plaintiff. The 1st plaintiff also filed a petition for rectification of wrong entries in the pahanis before the R.D.C., Mahbubnagar, against the 1st defendant. The suit filed by the 1st defendant in O.S. No.56 of 1978 is not the bar for filing the present suit. Hence, the 1st plaintiff filed the present suit for declaration of title and ownership and perpetual injunction in respect of plaint-A, B and C schedule lands situated at Kandur village, Addakal Mandal and for rectification of record rights, i.e., pahanies.

(b) The 1st defendant filed written statement denying all the averments made in the plaint and contended that the 2nd defendant has no legal entity in the eye of law. The 3rd defendant inherited the properties of her father on his death and the same were mutated in the revenue records after enquiry. The father of the 3rd defendant died long back when the 3rd defendant was only minor at the age of five or six years. The 3rd defendant was brought up by her mother and grand mother and they performed her marriage with the 1st plaintiff. The grand mother of the 3rd defendant by name Ramamma executed a document in favour of the 3rd defendant and accordingly mutation proceedings were affected and the 3rd defendant became the full owner of the suit schedule lands. So, the gift deed executed by the 3rd defendant in favour of the defendants 1 and 2 are valid. The 1st plaintiff, 3rd defendant and their son-Mandadi Bal Reddy attempted to trespass into the plaint-A schedule land and tried to dispossess the 1st defendant, but the 1st defendant approached the Court by filing O.S. No.56 of 1978 and the same was decreed in favour of the 1st defendant. The 1st plaintiff and the 3rd defendant secretly performed the second marriage of Mandadi Bal Reddy with the 2nd defendant. The 1st defendant filed C.C. No.37 of 1976 on the file of the Judicial Magistrate of First Class, Wanaparthi and the same was ended in compromise. The 3rd defendant was only the owner of the suit schedule property, which are her Stridhana properties and she is only competent to execute the gift deeds. The 1st plaintiff has no *locus standi* to file the suit and prayed to dismiss the suit.

(c) The 4th defendant filed written statement admitting the relationship of the parties and contended that the 3rd defendant had no right to execute the gift deeds in favour of the defendants 1 and 2. The 3rd defendant was not in possession of the suit schedule lands on the date of gift deeds and the 1st plaintiff alone is the owner of the suit schedule lands.

(d) Basing on the pleadings, the trial Court framed the following issues:

- 1) Whether the plaintiff is the owner of the suit A and B schedule lands situated at Kandur village, Addakal Mandal and he is liable to be declared as so?
- 2) Whether the plaintiff is entitled for perpetual injunction as prayed for?
- 3) Whether the plaintiff is entitled for decree for rectification of entries in column Nos.11 and 16 of phanies for the years 1975-76 to 1985-86 and subsequent years by deleting the name of the defendant No.1 in respect of A-schedule lands and to insert the name of the plaintiff?
- 4) Whether the gift deeds bearing registration Nos.560 of 1976 and 561 of 1976 dated 14.06.1976 on the file of the Sub-Registration Office, Wanaparthi are not binding on the plaintiff and liable to be declared so?
- 5) Whether the Judgment passed in O.S. No.56 of 1978 on the file of District Munsif operates *res judicata* in this suit?
- 6) Whether the suit is not valued properly and court fee paid is not correct?
- 7) To what relief?

(e) The trial Court after considering the evidence of P.Ws.1 to 6 and the documents Exs.A.1 to A.9 marked on behalf of the plaintiffs and the evidence of D.Ws.1 to 3 and the documents Exs.B.1 to B.6 marked on behalf of the

defendants, dismissed the suit, vide judgment and decree dated 31.08.1994. Aggrieved by the said judgment and decree, the plaintiffs preferred A.S. No.67 of 1994 and the first appellate court, while dealing with the matter, vide judgment and decree dated 30.06.1999, dismissed the appeal confirming the judgment and decree passed by the trial Court. Challenging the said decree and judgment passed by the first appellate court, the plaintiffs preferred the second appeal.

7. Learned counsel for the plaintiffs-appellants herein would contend that the 1st plaintiff is the illatom son-in-law of Narasimha Reddy and Kistamma and he is entitled to inherit the entire agricultural and other immovable properties of the family; the very basis for illatom adoption is an agreement to give the family property to the adoptee; there is no other male member in the family, except the 1st plaintiff; the 3rd defendant had no right to execute the gift deeds in favour of the defendants 1 and 2; both the Courts erred in relying on the entries in the revenue records in deciding the question of title; the judgment and decree in O.S. No.56 of 1978 and the appeals arising therefrom do not operate as *res judicata*; as the said suit was only for injunction, the determination of title do not arise directly and substantially; and ultimately, prayed to allow the second appeal by setting aside the judgments and decrees passed by both the Courts below. In support of his contentions, he relied on the following decisions:

(1) Basireddy and others v. The State of Andhra Pradesh, represented by the Special Tahsildar, L.R., Sangareddy¹.

(2) P. Lakshmi Reddy v. L. Lakshmi Reddy².

(3) V. Rajeshwari (Smt.) v. T.C.Saravanabava³.

8. There cannot be any dispute that, under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has

¹ APLJ 1978 (1) (H.C.)

² AIR 1957 SC 314

³ (2004) 1 SCC 551

no absolute right of appeal. He can neither challenge the decree on a question of fact nor on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse findings are some of the questions, which involve substantial questions of law.

9. As per the evidence on record, the specific case of the 1st plaintiff is that he came to the family of the defendants as an illatom son-in-law and on the demise of his father-in-law, he succeeded the suit schedule property. There is no dispute with regard to the marriage between the 1st plaintiff and the 3rd defendant. There is also no dispute with regard to the relationship between the 1st plaintiff and the other defendants. The contention of the 1st plaintiff is that he entered into the family of the defendants as an illatom son-in-law and at the time of taking the 1st plaintiff as an illatom son-in-law, it was agreed by the father of the 3rd defendant that the entire agricultural land and other immovable property would be inherited by the 1st plaintiff and so, the 1st plaintiff alone became the owner and possessor of the suit schedule property after death of his father-in-law. It is his further contention that from the date of adoption as illatom son-in-law, the 1st plaintiff alone had cultivated the suit schedule property by paying land revenue and within the knowledge of one and all till his demise. As per the evidence on record, the 3rd defendant executed registered gift deeds in respect of plaint-C

schedule lands in favour of the defendants 1 and 2. The suit schedule lands were mutated in the name of the 3rd defendant in the revenue records. The contention of the 1st plaintiff is that the patta standing in the name of 3rd defendant is only a nominal one and she is not the real owner of the suit schedule lands. The gift deeds referred above are dated 15.04.1976 executed by the 3rd defendant in favour of the defendants 1 and 2. The 3rd defendant did not challenge the execution of the said gift deeds as fraudulent, as contended by the 1st plaintiff. As per the oral and documentary evidence, the defendants 1 and 2 are cultivating the lands gifted in their favour and revenue records are also in their favour. The defendants 2 and 3 remained *ex parte* throughout. The 1st defendant only contested the suit of the plaintiff.

10. From the evidence, it is established that when the 1st plaintiff, defendants 3 and 4 made an attempt to trespass into the lands gifted, the 1st defendant filed O.S. No.56 of 1978 on the file of the District Munsif Court, Wanaparthi and obtained decree for perpetual injunction. The said judgment and decree were confirmed in the appeal and the second appeal filed by the defendants therein was also dismissed. As per the evidence of the 1st plaintiff (P.W.1), when he was taken as an illatom son-in-law to the family of Narasimha Reddy, i.e., his father-in-law, his father-in-law was no more. As per his evidence, he was assured of succeeding the property left by his father-in-law Narasimha Reddy.

11. As per the evidence of the 1st defendant (D.W.1), the entire suit schedule property originally belongs to her mother-in-law, i.e., the 3rd defendant and so, the 1st plaintiff did not derive title to the property at any point of time. There is specific evidence of the 1st plaintiff (P.W.1) that after the death of Narasimha Reddy and Ramamma (mother-in-law of the 1st plaintiff), the suit schedule property was transferred in the name of 3rd defendant. After knowing about the transfer of property in the name of his wife-3rd defendant, the 1st

plaintiff did not make any protest or object, for decades to correct the revenue record. As per the evidence of P.W.2, the suit schedule property was standing in the name of Ramamma, i.e., mother-in-law of the 1st plaintiff. So, the evidence of P.W.2 establishes that the suit schedule property belongs to Ramamma, i.e., mother of the 3rd defendant. Therefore, the question of Narasimha Reddy promising to give property in the name of the 1st plaintiff would not arise. The evidence of the 1st plaintiff (P.W.1) was that there was an assurance in his favour when he was brought into the family as an illatom son-in-law, he would alone be entitled to inherit the property of his father-in-law. But there is no single document to establish that the suit schedule property was owned by his father-in-law Narasimha Reddy at any point of time. There is also admission of the 1st plaintiff (P.W.1) that the suit schedule property is in the name of Ramamma (mother-in-law of the 1st plaintiff).

12. Having considered the evidence on record, the first appellate court disbelieved that the 1st plaintiff entered into the family as an illatom son-in-law on the promise of succeeding the property left by his father-in-law Narasimha Reddy. The first appellate court also analysed the judgment and decree passed in O.S. No.56 of 1978 on the file of the District Munsif Court, Wanaparthy, which was filed by the 1st defendant herein, wherein the 1st plaintiff was party, and the said suit was decreed for perpetual injunction in favour of the 1st defendant herein and the same was confirmed in the appeal and so also in the second appeal. The question relating to the 1st plaintiff entering into the family of the defendants as an illatom son-in-law and his entitlement to succeed the property left by his father-in-law Narasimha Reddy are all factual aspects. Those are all elaborately dealt with and were determined against the 1st plaintiff by both the Courts below. The first appellate court while analysing the judgment and decree in O.S. No.56 of 1978 on the file of the District Munsif Court, Wanaparthy, held that the 1st defendant herein alone was the owner and possessor of the suit

schedule-A property covered under Ex.A.1-gift deed executed by the 3rd defendant, being the absolute owner and possessor of the same. Had there been any assurance to the 1st plaintiff (P.W.1) that as an illatom son-in-law, he would be entitled to inherit the property left by his father-in-law, he would certainly have mentioned this aspect in the written statement filed by him in O.S. No.56 of 1978. The first appellate court further held that the inconsistent pleading was made by the 1st plaintiff in the subject suit and in O.S. No.56 of 1978.

13. In **Basireddy's** case (1 supra), it is held by this Court that an illatom son-in-law gets a right to a share in the property even without a document of transfer of the share, agreed upon by him and his father-in-law. In **P.Lakshmi Reddy's** case (2 supra), it is held by the Hon'ble Supreme Court that in Andhra Pradesh, an illatom son-in-law is a boy incorporated into the family with a view to give a daughter in marriage and is customarily recognised as an heir in the absence of a natural born son. In **V. Rajeshwari's** case (3 supra), the Hon'ble Supreme Court held that the plea of *res judicata* cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided and needless to say, these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit. The 1st plaintiff herein is not similarly placed person to the facts and circumstances of the decisions on which reliance is placed by the learned counsel for the plaintiffs. The facts and circumstances of the present case are quite different from the facts and circumstances of the decisions relied on by the learned counsel for the plaintiffs.

14. 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 recorded 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. The first appellate court had elaborately dealt with regard to the valid execution of Exs.A.1 and A.2 and also held that the 3rd defendant who executed the said documents did not choose to cancel those gift deeds in respect of C-schedule property. The 3rd defendant did not support the case of the 1st plaintiff during her lifetime. Had the gift deeds were executed by coercion, fraud or misrepresentation, the 3rd defendant would have definitely got cancelled the same. Even the 3rd defendant did not support directly or indirectly that the 1st plaintiff was brought into the family on a promise of inheritance of the property left by Narasimha Reddy his father-in-law. The judgment and decree passed in O.S. No.56 of 1978 operates as *res judicata* against the 1st plaintiff. The issues therein with regard to the possession of the 1st defendant over the suit schedule property claiming title and possession under a registered gift deed were dealt with. Inconsistent defences were taken by the 1st plaintiff in the written statement filed in O.S. No.56 of 1978 and in the present suit. The findings with regard to the *res judicata* are based on evidence and record. The substantial questions of law relating to the entitlement of the 1st plaintiff to succeed the property left by Narasimha Reddy, were elaborately dealt with by both the Courts and answered against the appellants. 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. Viewing from any angle, no question of law much less substantial question of law does arise for determination in this second appeal. Therefore, this second appeal is devoid of merit and is liable to be dismissed.

15. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 30.06.1999 in A.S. No.67 of 1994 on the file of the

District Judge, Mahbubnagar. The Miscellaneous Petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 19.09.2018

siva

