

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

A.S.No.48 of 1999

JUDGMENT:

This appeal is filed by the unsuccessful plaintiff against the judgment and decree dated 11.09.1998 in O.S.No.422 of 1995 passed by the Principal Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

2. This is a first appeal and for the sake of convenience, the parties are referred to plaintiff and defendants only.

3. The suit is filed for declaration of ownership in respect of the suit schedule property in Survey Nos.61, 68, 71, 72, 77, 78, 79, 81 and 83 admeasuring Ac.10.18 guntas situated at Annojiguda village, Ghatkesar Mandal, Ranga Reddy District. It is the case of the plaintiff that he is the absolute owner and possessor of the suit schedule properties and that his father-A. Rajalingam was the owner and possessor of these properties having acquired the same from his earnings. The said Rajalingam adopted the plaintiff and he performed the marriage of the plaintiff during his life time. Later, the said Rajalingam died in the year 1983 leaving behind the plaintiff as his legal heir. After the death of Rajalingam, the plaintiff applied for mutation in the relevant revenue records and mutation was ordered incorporating the name of the plaintiff on 09.09.1993. The plaintiff is paying land revenue. It is contended that the defendants without

any manner of rights whatsoever are trying to interfere with in his possession and are making a false claim in respect of the suit schedule property and that there was interference on 15.07.1998 and 16.07.1995. In view of the said interference, the plaintiff has filed the suit for declaration of ownership, injunction etc.

4. The second defendant filed her written statement contending that the suit is frivolous and vexatious in nature. The adoption of plaintiff is denied for want of knowledge. It is also contended that late Rajalingam had executed a registered sale deed No.4966 of 1980, dated 26.05.1980 conveying an extent of Ac.9.35 guntas, which is the suit land in favour of one Eega Pandu and Salla Ambareddy. The actual ownership was transferred to the said Pandu and Ambareddy. The said Pandu and Ambareddy have, in turn, conveyed the land to various purchasers by way of registered sale deeds. They have conveyed an extent of two acres land in favour of one A. Sampoorna Kamala, through registered sale deed No.4972 of 1984 dated 19.12.1984 and an extent of two acres was conveyed in favour of S. Devendar Rao, through registered sale deed No.4974 of 1984 of the same date and an extent of two acres was conveyed in favour of K. Pratap Reddy, through document No.4975 of 1984 and another extent of two acres was conveyed in favour of P. Bhanumati, vide document No.4973 of 1984. The second defendant and other defendants have purchased eight acres of land out of the suit land from

the above said purchasers and an extent of half acre is purchased by the first defendant from Sampoorna Kamala, vide document No.487 of 1987, dated 20.01.1987, six acres of land is purchased by the second defendant from Bhanumathi, Prathibha Reddy and Devendar Rao and an extent of one acre is purchased by the third defendant from Sampoorna Kamala and the fourth defendant purchased an extent of half acre from Sampoorna Kamala. Thus, the second defendant and other defendants have purchased an extent of eight acres and acquired title and possession of the suit land. The entries in the revenue records will neither create nor extinguish the rights of the parties. The mutation in favour of the plaintiff does not confer any title in his favour and the mutation is null and void and that since the second defendant purchased the lands through registered sale deeds.

5. Based on the above pleadings, the following issues were settled for trial:

- i) Whether the plaintiff is entitled for declaration as owner fo the suit schedule properties?
- ii) Whether the plaintiff is entitled for perpetual injunction sought for?
- iii) To what relief:

6. For the plaintiff, PWs.1 to 3 were examined and Exs.A.1 to A.19 were marked. For the defendants, DW.1 was examined and Exs.B.1 to B.13 were marked.

7. The lower Court after considering the evidence on record and submissions came to a conclusion that the

plaintiff is not entitled to any relief and dismissed the suit. This judgment and decree dismissing the suit on 11.09.1998 is the subject matter of the present appeal.

8. This Court has heard Sri Harender Pershad, learned counsel for the appellant/plaintiff and Sri V. Manohar Rao and N. Vasudeva Reddy, learned counsel for the respondents/defendants.

9. The suit is filed for a declaration that the plaintiff is the owner of the property described in the schedule and for a consequential relief of injunction restraining the defendants from interfering with the possession of the plaintiff. As per the well settled law on the subject, the burden is squarely upon the plaintiff to plead and prove that certainly his title to the property.

10. It is the submission of the learned counsel for the appellant/plaintiff that the lower Court wrongly decided the issue No.1 and that according to him, the long possession and enjoyment of the plaintiff was ignored. It is his submission that the possession follows title and that therefore, the Court went wrong in ignoring the record that is available. It is also his submission that the lower Court came to a conclusion that the adoption that he has pleaded was correct. Therefore, the learned counsel argued that the Court went wrong in negating his other contentions. The mutation proceedings, the revenue records etc. are, according to the plaintiff, enough to prove his title.

11. In reply thereto, the learned counsel for the respondents/defendants pointed out that as can be seen from Exs.B.1 & B.2, the plaintiff was aware of the title set up by the defendants. According to the learned counsel for the respondents, the defendants applied for mutation and for issuance of pattadar passbooks etc. prior to June, 1994 and in June 1994 itself, notices were issued to the plaintiff. The said notice is dated 10.06.1994 and is a part of Ex.B.2. The reply of the plaintiff to the notice is marked as Ex.B.1. It is dated 02.07.1994. The order dated 13.11.1995 passed by the Mandal Revenue Officer, Ghatkesar is marked as Ex.B.2. As per the learned counsel, a reading of the Ex.B.2 shows that the plaintiff was aware of the details of the title and the claim of four defendants in this suit. He points out that the plaint was filed much later in July, 1995 and that the witnesses were later examined in the suit. The learned counsel points out that when DW.1 was examined, he marked not merely the sale deeds of the defendants but also the title deeds of the predecessors-in-title. He clearly deposed that Rajalingam sold Ac.9.35 guntas to Amba Reddy and Pandu, who in turn sold it to others. The learned counsel argued that in the cross-examination not even a question was put on any of the documents, which are the documents of title and marked as Exs.B.4 to B.13. The learned counsel argued that the failure to cross-examine on the contents of the documents particularly in a suit for declaration leads to a conclusion that

the plaintiff has accepted the contents of the documents. This Court is also of the opinion that in view of the settled law on this subject and more particularly the reported judgments in a) ***Man Kaur (dead) by LRS. v. Hartar Singh Sangha***¹; b) ***Traders Syndicate v. Union of India***²; and c) ***A.E.G. Carapiet v. A.Y. Derderian***³ that in a suit for declaration of title when the party asserts title through registered sale deed, it is bounden duty of the plaintiff to cross-examine the witness on the contents of the documents and the flow of title. Failure to do so will lead to a conclusion that the plaintiff cannot dispute the contents of the same. Consequently, the contents must be held to be true. The lower Court also noticed this fact. It is mentioned in the judgment that not even a suggestion was put to the witness about the contents of the document. The lower Court also rightly noticed that after the death of the father-Rajalingam, the property was not mutated in the name of the present plaintiff up to 1993. It is also clear that the plaintiff got his name mutated in the revenue records after 1993, taking advantage of the fact that his father name as 'Rajalingam' is still in the revenue records.

12. The learned counsel for the respondents is also right in pointing out that the revenue records themselves are not evidence of 'title'. This proposition of law does not require

¹ (2010) 10 SCC 512

² AIR 1983 Calcutta 337

³ AIR 1961 Calcutta 359

any further elaboration. As far as the adoption of the plaintiff by Rajalingam is concerned not much dispute was raised by either side and the respondents did not also question this finding on adoption. However, the learned counsel relied on Section 13 of the Hindu Adoption and Maintenance Act and argued that even if the adoption is correct; the adoptive father could still sell his property. There is no dispute about this proposition.

13. After the sale made by Rajalingam himself (the sale deed is marked as Ex.B.4), the plaintiff cannot claim that late Rajalingam had title to the property. This property was further transferred as pleaded and proved resulting in the four sale deeds executed in favour of the present defendants 1 to 4, which are marked as Exs.B.8 to B.11. The plaintiff did not challenge the contents of the original document-Ex.B.4 or subsequent documents. The plaintiff is also aware of the title of the defendants, as can be seen from the proceedings covered by Exs.B.1 & B.2. But, he did not challenge the sale or disprove the same in any manner.

14. Therefore, this Court is of the opinion that the lower Court rightly decided on issue No.1. This Court also concurs with the finding of the lower Court on issue No.1 and holds that the plaintiff failed to plead and prove that he has title to the property. The finding of the lower Court on issue No.1 is confirmed.

15. As far as issue No.2 is concerned, it is to the effect “whether the plaintiff is entitled to a perpetual injunction.” As can be seen, the title of the plaintiff is not proved while the title of the defendants is proved. The lower Court also rightly noticed that despite the plaintiff being aware of the facts and circumstances the plaintiff did not clearly plead and prove about the pendency of his proceedings and the claim of the defendants to the property in his plaint or in his evidence. The Mandal Revenue Officer, vide order dated 13.11.1995, which was also marked as Ex.B.2, also held that the entries in the revenue records are to be changed and modified in view of the sale deeds. He recognized the possession of the defendants. The contents of the sale deeds also clearly disclose that possession was delivered to the purchasers. Right from 1984, the sale deeds disclose that the purchaser is in possession of the property.

16. The learned counsel for the appellant/plaintiff pointed out that against Ex.B.2-proceedings of the Mandal Revenue Officer dated 13.11.1995, an appeal was preferred and that the order dated 22.01.1998 passed by the Revenue Divisional Officer in the appeal was marked as Ex.A.19. The learned counsel points out that the Revenue Divisional Officer held that the plaintiffs are in possession of the property, but he directed the parties to approach the civil Court for adjudication of the rights. The Revenue Divisional Officer has

also noticed that the suit was already filed and the order reflects the suit number also.

17. In reply to this, the learned counsel for the respondents submitted that in January, 1998 the Revenue Divisional Officer disposed off the appeal (Ex.A.19). After this, according to the learned counsel, DW.1 was examined on 16.04.1998, 23.04.1998 and 23.06.1998. The learned counsel points out that before the Revenue Divisional Officer in the appeal (Ex.A.19), an argument was raised that the signatures on the registered documents are false. But, in the cross examination, not even a suggestion was put to DW.1 that the signature on Ex.B.4 does not belong to late Rajalingam or that it was not executed by Rajalingam. No effort was also made to prove that the Ex.B.4 is not executed by Rajalingam. In the absence of such evidence Ex.B.4 sale deed executed by Rajalingam is held to be valid and consequently, the sale deeds executed pursuant to Ex.B.4 are also upheld. The plaintiff cannot rely on Ex.A.19-order for it also directed both the parties to agitate their rights in a court to prove their case. It is not a final order. The Revenue Divisional Officer held that the matter is sub-judice also and referred to the suit O.S.No.422 of 1995 out of which this appeal emanates. Therefore, this Court holds that the plaintiff is not entitled to an injunction and the finding on issue No.2 is also confirmed.

18. For all the above reasons, this Court is of the opinion that the judgment and decree of the lower Court are correct and no reasons are made out to interfere with the same. The appeal is, therefore, dismissed. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 31.01.2018
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