

**HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**SECOND APPEAL No.1074 of 1999**

**JUDGMENT:**

This Second Appeal is preferred by the appellants/plaintiffs aggrieved by the Judgment and Decree dated 08.09.1999 in A.S.No.49 of 1998 passed by the learned Vacation Civil Judge-cum-District Judge, Cuddapah, whereby and whereunder the learned Judge allowed the appeal filed by the defendant and set aside the Judgment and Decree dated 20.04.1998 in O.S.No.6 of 1995 passed by the IV Additional Junior Civil Judge, Cuddapah, filed for declaration and possession.

2) The parties in this Second Appeal are referred as they were arrayed before the Trial Court.

3) The factual matrix of the case is thus:

a) The plaintiffs' case is that 1<sup>st</sup> plaintiff purchased the plaint schedule property i.e, a dilapidated house and vacant site, from one Sultan Sab S/o. Kamal Sab, under Ex.A.1—registered sale deed dated 21.10.1989. The 1<sup>st</sup> plaintiff constructed a house after demolishing the dilapidated house and gave it to defendant in the year 1992 on a monthly rent of Rs.450/-. The defendant paid rents for sometime and thereafter committed default in payment of rents. On 27.10.1992, the defendant secured a forged sale deed in respect of the suit house alleged to have been executed by a lady impersonating herself as Mahaboobunnisa. When the defendant presented a petition before the Commissioner,

Cuddapah Municipality seeking mutation of his name as the owner of the suit schedule property, the 1<sup>st</sup> plaintiff objected it and the Commissioner, after making preliminary enquiry, came to the conclusion that the sale deed executed in favour of the defendant was forged one and hence, gave a complaint to the police against the defendant. Thereafter, defendant filed a suit—O.S.No.281 of 1994 for permanent injunction and when the said suit was pending, the plaintiffs filed the instant suit—O.S.No.6 of 1995 seeking declaration and possession.

b) The defendant filed written statement denying the plaint averments and contended that he has been in possession of the suit property much prior to the execution of Ex.A.1—sale deed and that he purchased the suit property under Ex.B.2. He further contended that as the name of his vendor i.e, Mahaboobunnisa W/o. Kamal Saheb @ Khader Valli and the wife of 1<sup>st</sup> plaintiff i.e, Mahaboobunnisa, is same and also as the husband's name of the vendor was shown as Kamal Saheb @ Khader Valli, the plaintiffs raised the contention that his wife never sold the property to the defendant. He also contended that nowhere in the plaint, the plaintiffs have mentioned that defendant purchased the property from the wife of plaintiff. He thus prayed to dismiss the suit.

c) Basing on the above pleadings, the Trial Court framed the following issues.

*i) Whether the plaintiffs are entitled for declaration and possession of suit schedule property as prayed for?*

*ii) To what relief?*

d) During trial, PWs.1 to 3 were examined and Exs.A.1 to A.5 were marked on behalf of plaintiffs. DWs.1 and 2 were examined and Exs.B.1 and B.21 were marked on behalf of defendant.

e) After hearing both sides and basing on the oral and documentary evidence, the Trial Court decreed the suit declaring the title of the plaintiffs over the suit schedule property and directed the defendant to deliver the suit schedule property.

f) Aggrieved, the defendant preferred AS No.49/1998, which was allowed by lower Appellate Court by setting aside the judgment and decree of the Trial Court.

Hence, the instant Second Appeal by plaintiffs.

4) While admitting the Second Appeal this Court on 22.01.2000, framed the following substantial questions of law:

i) *Whether the judgment of the lower appellate Court is sustainable in law, when the evidence of PWs.1 to 3 and Ex.A.1 is not considered, when it is the final court to consider entire evidence?*

ii) *Whether the registered sale deed which is duly proved requires corroboration under law to declare the title of the vendee under the document?*

5) Heard arguments of Sri G.Ramachandra Reddy, learned counsel representing Sri M.N.Narasimha Reddy, learned counsel for appellants and Sri Karri Murali Krishna, learned counsel for respondent.

6) **POINT Nos.1 and 2:** The above substantial questions of law are taken up together since they relate to same aspect. In a suit for declaration and relief of possession, the trite principle of law is that the plaintiff has to establish his lawful title as on the date of suit and his legal possession till the date of defendant trespassed into the suit property and the said burden, the plaintiff has to discharge without depending on the weakness of the defendant's case if any. The Apex Court in the decision reported in *Union of Indian (UOI) and others v. Vasavi Co-op. Housing Society Ltd. and others*<sup>1</sup>, observed thus:

*“**Para 15:** The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title setup by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.”*

Keeping in view the above principle, it has now to be seen whether the plaintiff could establish his case to deserve for a decree. Plaintiffs' case can be adumbrated to the effect that the 1<sup>st</sup> plaintiff claimed title to the suit property under Ex.A.1—registered sale deed dated 21.10.1989 executed by one Sultan Sab. It is pleaded that the 1<sup>st</sup> plaintiff purchased a dilapidated house along with vacant site under Ex.A.1 and later he constructed house after demolishing the dilapidated house and leased out the same to defendant in the year 1992 on a monthly rent Rs.450/-. The

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<sup>1</sup> AIR 2014 SC 937

defendant for sometime paid rents regularly, later committed default. He entertained an evil idea to grab the house and brought up a spurious registered sale deed dated 27.10.1992 in respect of the suit schedule house said to have been executed by one Mahaboobunnisa, who is the paternal aunt of the defendant. Plaintiffs would contend that the said Mahaboobunnisa has no right or title to execute sale deed in favour of defendant. The defendant presented a petition before the Commissioner, Kadapa Municipality requesting to mutate his name as the owner of the suit schedule property. The Municipal Commissioner suspecting the title of the vendor of the defendant, summoned the 1<sup>st</sup> plaintiff, as the name of his wife also happened to be Mahaboobunnisa and conducted a preliminary enquiry and concluded that Ex.B.2—sale deed executed in favour of defendant was a forged one and hence complained the matter to the police. Meanwhile the defendant filed a suit—O.S.No.281 of 1994 on the file of IV Additional Junior Civil Judge, Kadapa, for permanent injunction in respect of suit property against the 1<sup>st</sup> plaintiff and obtained an interim injunction in I.A.No.796 of 1994. However, later the said suit was dismissed as abated since the defendant failed to bring the LRs of the 1<sup>st</sup> plaintiff on record. Thus, plaintiffs would claim that they are the owners of the suit property.

7) Defendant denied most of the plaint allegations. His case is that he had been in possession of the suit schedule property much prior to the Ex.A.1—sale deed and he purchased the suit schedule property under Ex.B.2—registered sale deed dated 27.10.1992 from Mahaboobunnisa W/o. Syed Khader Valli. His emphatic case is that 1<sup>st</sup> plaintiff's wife

Mahaboobunnisa (PW1) and his vendor Mahaboobunnisa are different persons but ofcourse it was just a coincidence that his vendor and her husband bear the same names as that of 2<sup>nd</sup> plaintiff and her husband i.e, 1<sup>st</sup> plaintiff. It is his further case that the suit property originally belonged to his father who gifted away the same to his sister i.e, Mahaboobunnisa and the defendant purchased the suit property from her for valid consideration under Ex.B.2—sale deed. He has been in possession of the same and using the same as slaughter house and doing skin business.

8) In view of the respective pleadings, there is no dispute between the parties with regard to the physical identification of the property, ofcourse each of them claim as owner of the property. As already stated supra, the burden of proof rests heavily on the plaintiffs to prove their title as on the date of suit and possession till the date of encroachment by the defendant. Plaintiffs to establish their case, mostly shored up on Ex.A.1—sale deed, a perusal of which shows that it was executed on 21.10.1989 by Sultan Sab in favour of 1<sup>st</sup> plaintiff for Rs.12,800/-. The description of the property in Ex.A.1 is important in view of the respective contentions of the parties. In the schedule of Ex.A.1, it is mentioned that the scheduled property bearing door No.15/207-B, situated in Bandlamitta Street, Bellary road is in dilapidated condition and the same along with vacant site bears boundaries East: sullage canal, West: sandu rasta, North: Road, South: house of Shavali with measurements East to West 32 feet, North to South on eastern side 11 feet and Western side 2 feet. The aforesaid particulars ofcourse are tallying with plaint schedule. Then, plaintiffs examined PW.2—the

attestor of Ex.A.1. Except his attesting Ex.A.1, he could not say how the plaintiffs' vendor got the suit property. He made a crucial admission in the cross-examination that the defendant has been doing skin business in the suit property from 1987. He denied the suggestion that Sultan Sab was not the owner of the suit property and he executed Ex.A.1 in respect of some other property due to the insistence of 1<sup>st</sup> plaintiff to discharge the debts due to him by Sultan Sab. PW.3 is the Junior Assistant in Kadapa Municipality through whom Exs.A.3 to A.5 were marked. Ex.A.2 is the encumbrance certificate relating to suit property. It only refers to Ex.A.1-sale deed and none other alienations including the title of the vendor of plaintiff. Ex.A.3 is the petition dated 16.06.1993 submitted by 1<sup>st</sup> plaintiff to Municipal Commissioner, Kadapa. In Ex.A.3, the 1<sup>st</sup> plaintiff mentioned altogether a different version. He stated, he paid tax to his house in the name of his wife on 06.02.1990. Due to the ill-health of his wife, he borrowed Rs.15.000/- from one S.Mahaboob Basha and mortgaged his house and executed a pronote. Later, the said Mahaboob Basha, sold the said house to the defendant and the defendant forcibly occupied his house and started paying tax to municipality. He further mentioned that the defendant had no right over the suit property and hence the Municipality may record 1<sup>st</sup> plaintiff's name in tax receipts for the year 1991 to 1993. Needless to say, Ex.A.3 is quite opposite to the plaint averments. In plaint, he pleaded as if he let out the house to defendant in 1992. Whereas in Ex.A.3 he mentioned as if he mortgaged his house to one S. Mahaboob Basha, who in turn sold the said property to the defendant.

a) Then Ex.A4 is the copy of complaint sent by Commissioner of Kadapa Municipality to Kadapa II Town SI. Suspecting about Ex.B.2—sale deed of defendant, the said complaint was made. It is not known whether police referred the matter as civil dispute or found the defendant guilty of the fabrication. Hence, Ex.A.4 is of no much use. Ex.A5 is another petition dated 18.06.1994 submitted by 1<sup>st</sup> plaintiff to Municipal Commissioner, requesting to accept house taxes from him. He stated that the defendant created a fabricated sale deed said to be executed by his wife in his favour.

9) Thus, on a close scrutiny of the oral and documentary evidence produced by the plaintiffs, they would reveal that Ex.A.1—sale deed no doubt coincides with plaint schedule property. However, plaintiffs failed to establish the title of their vendor. Ex.A.2 shows only one transaction covered by Ex.A.1 but there is no reference about the title of plaintiffs' vendor. Thus it is quite unknown how plaintiffs' vendor got suit property. In view of defendant's emphatic case that one Mahaboobunnisa was the owner but not Sultan Sab, the burden is on the plaintiffs to establish their vendor's title, which they failed to do so. Except producing Ex.A.1, plaintiffs have not produced the title deeds of their vendor. Further, they failed to produce tax receipts showing their vendor paying municipal taxes to the suit property. The plaintiffs claimed that in the place of demolished old house, they constructed a new house in 1992. However, they failed to produce the plan and approval order issued by the Municipality. Plaintiffs also failed to produce tax receipts to show that 1<sup>st</sup> plaintiff paid taxes to the suit house after purchasing the suit

property. Above all, the stand of plaintiffs with regard to defendant is quite inconsistent. In the plaint they referred him as their tenant whereas in Ex.A.3, they stated that their mortgagee clandestinely sold the property to defendant. Even to establish that the defendant is their tenant, they did not produce any document. Further, while plaintiffs claimed that the defendant was inducted as their tenant in 1992, PW.2 stated that the defendant was doing skin business in the suit house since 1987.

10) The aforesaid defects in plaintiffs' case cast a severe doubt about their title and possession of the suit property though their title deed is prior to Ex.B.2—sale deed of defendant. On the other hand, besides producing Ex.B.2—sale deed, the defendant produced tax receipts covered by Exs.B.3 to B.12. Ex.B.3 shows that tax was paid in the name of Mahaboobunnisa, the vendor of defendant on 16.06.1989. As rightly observed by the lower Appellate Court, by 16.06.1989 neither the 1<sup>st</sup> plaintiff nor his wife became the owner of the suit schedule property. The plaintiffs purchased the property under Ex.A.1 only on 21.10.1989. Therefore, the name Mahaboobunnisa appearing on Ex.B.3 must be related to the vendor of the defendant, who is his paternal aunt but not PW.1. Hence, it must be held that the defendant showed a better title than plaintiffs. His possession even prior to plaintiffs was manifested from the evidence of PW.2 as well as the oral and documentary evidence of the defendant. It is true that the defendant too did not produce any record showing title of his father in the suit property and his making a gift in favour of his sister. However, as stated earlier the weakness in the

defendant's case will not add strength to plaintiffs, who failed to establish their case.

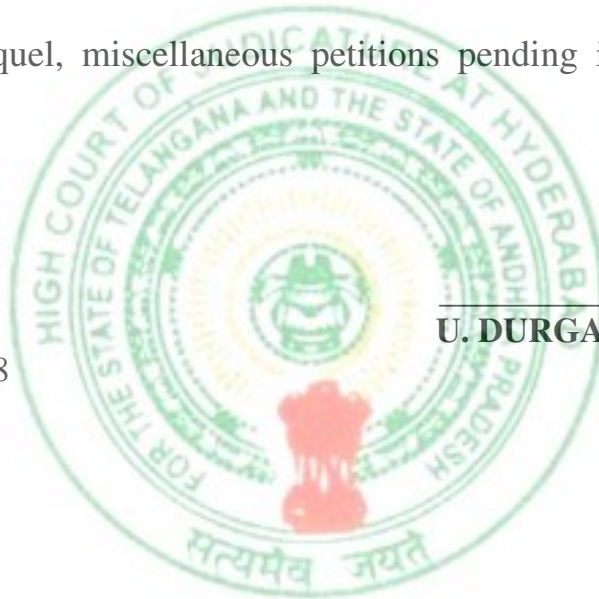
11) Thus on a conspectus of the facts and evidence, the plaintiffs failed to establish their title and the lower Appellate Court has rightly dismissed the plaintiffs' suit. Therefore, the substantial questions of law projected by the plaintiffs do not merit consideration.

12) Accordingly, the Second Appeal is dismissed by confirming the judgment of the lower Appellate Court in AS No.49 of 1998.

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

Date: 21.03.2018

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**U. DURGA PRASAD RAO, J**