

THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER

C.C.C.A.No.70 of 2004

JUDGMENT:

This appeal is filed by the appellants-defendants 1 and 2, aggrieved by the judgment and decree dated 07.01.2004 in O.S.No.1619 of 1996, on the file of the V Senior Civil Judge, City Civil Court, Hyderabad, wherein the suit filed by the plaintiffs was decreed granting preliminary decree against the defendants 1 and 2 for partition of the suit schedule property by metes and bounds granting 50% share to the plaintiffs and delivery of possession of the same in final decree proceedings.

2. Heard the learned counsel for the appellants-defendants and the learned counsel for the respondents-plaintiffs and perused the record.

3. The parties hereinafter referred to as plaintiffs and defendants as arrayed in the original suit.

4. Learned counsel for the appellants-defendants contended that the defendant No.1 is the owner and is in continuous possession of the suit schedule property bearing H.No.8-3-166/2, Plot No.2 in Sy.No.58 situated at Eerragadda, Hyderabad. There is no single document to show that the plaintiffs are in possession of the suit schedule property at any point of time. Further more, the defendants are in exclusive ownership and possession of the suit schedule property from November, 2008 and therefore, the suit filed by the plaintiffs-respondents in the year 1996 is barred by limitation. Though the property was purchased in the name of the

mother of the plaintiffs, the defendant No.1 paid the entire sale consideration under Ex.A.1-certified copy of the original sale deed Ex.B.1, dated 26.10.1974, and since then the defendant No.1 is in continuous possession and enjoyment of the suit schedule property as the absolute owner. Without there being any possession, the plaintiffs were claiming joint possession with the defendants. There is no single document to substantiate the same. As there were strained relations between the father of the plaintiffs and the husband of the defendant No.1, the plaintiffs started claiming share in the suit schedule property. The defendants denied that the suit schedule property is in the occupation of tenants and the defendant No.1 collected the rents. The rents were not shared at any point of time by the mother of the plaintiffs Smt Monorama Bai Dubey. Without there being a single document to establish joint title and possession of the plaintiffs, the suit was filed erroneously. Moreover, Smt Monorama Bai Dubey, mother of the plaintiffs 1, 5 and 6 had no source of income to purchase any property during her life time. The entire sale consideration was paid by the defendants. The Court below without giving cogent reasons discarded Ex.B.3-duplicate pass book issued by Syndicate Bank. The Court below ought not to have relied on Ex.A.4 and ultimately prayed to allow the appeal and set aside the judgment and decree dated 07.01.2004 passed by the Court below in O.S.No.1619 of 1996.

5. On the other hand, it is submitted by the learned counsel for the respondents/plaintiffs that defendant No.1 and the mother of the plaintiffs jointly purchased the suit schedule property under Ex.B.1 original sale deed. There is specific mention in Ex.B.1 that

50% of sale consideration was paid by the mother of the plaintiffs Smt.Manorama Bai. There are number of documents to substantiate the joint ownership and possession of the parties to the suit schedule property. At no point of time, the possession of the plaintiffs had become adverse as contended by the defendants. The contention that Smt Manorama Bai was dispossessed in November, 1996 is also a false contention, which is invented for the purpose of the case. Though the parties are in joint ownership and possession of the suit schedule property, the Court below while answering the issues framed elaborately analyzed the oral and documentary evidence and held that the parties to the litigation were in joint possession over the suit schedule property and rejected the contentions made on behalf of the defendants and decreed the suit. There are no merits to vary with the judgment and decree of the Court below and ultimately prayed to dismiss the appeal.

6. In view of the submissions made by both sides, the following points arose for determination:

1. Whether the suit schedule property bearing H.No.8-3-166/2, Plot No.2 in Sy.No.58 situated at Eerragadda, Hyderabad was jointly purchased by the defendant No.1 and Manorama Bai for a valuable sale consideration under Ex.B.1(A1) registered sale deed?
2. Whether the plaintiffs and the defendants are in joint possession and enjoyment of the suit schedule property?
3. Whether the judgment and decree passed in O.S.No.1619 of 1996 dated 07.01.2004 is liable to be set aside?

7. The plaintiffs to prove that they are in joint possession of the suit schedule property examined PW.1-Pramod Kumar Dubey and got marked Exs.A.1 to A.4. On behalf of the defendants, Bilquis Hussaini Dubey/defendant No.1 deposed as DW.1 and got marked Exs.B.1 to B.15.

8. There is no dispute with regard to the relationship in between the parties to the litigation. The specific case of the plaintiffs is that originally the suit schedule property was purchased by the husband of defendant No.1 and the father of the plaintiffs 1, 5, 6 in the name of the mother of the plaintiffs 1, 5 and 6 and defendant No.1. Till death, the mother of the plaintiffs, Manorama Bai Dubey was in possession of the suit schedule property along with defendant No.1. After the death of Manorama Bai Dubey, her husband B.V.Dubey continued in joint possession of the property along with defendant No.1. On his death, the plaintiffs became joint owners and possessors of the suit schedule property along with defendant No.1. Ex.B.1 is the original sale deed dated 26.10.1974 and Ex.A.1 is its certified copy under which the suit schedule property was purchased from Dr.C.Lalitha and Dr.C.Lalitha purchased the said property from one Khursheedunnissa Begum under Ex.A.2/registered sale deed.

9. There is specific evidence that when the plaintiffs requested to partition the suit schedule property by metes and bounds, the defendant No.1 on 26.09.1996 refused to partition the suit schedule property. Under Ex.A.1-certified copy of Ex.B.1-original sale deed, the mother of the plaintiffs is the claimant having 50% share so also the defendant No.1. The case of the defendants is

that Manorama Bai, mother of the plaintiffs, is only a name lender. There is no explanation as to what made the defendant No.1 to add Manorama Bai as one of the claimants in Ex.B.1.

10. Though Ex.B.1-original sale deed and other title documents of the vendor are in possession of the defendants, the defendants could not establish that the suit schedule property was exclusively purchased by the defendant No.1. Ex.A.4 is a receipt under which sale consideration of Rs.10,000/- was paid by the husband of Manorama Bai Dubey and the husband of the defendant No.1. Ex.A.4 clearly demonstrates that the sale consideration covered under Ex.A.1 was equally paid by both the claimants. Therefore, Ex.A.4 falsifies the contention that the entire sale consideration was paid by the defendant No.1 or her husband. It is also pertinent to state that under Ex.B.1-original registered sale deed, at page No.3, there is reference to Ex.A.4 that the sale consideration was paid under Ex.A.4. Ex.A.4 also shows that both Manorama Bai Dubey and V.V.Dubey have jointly paid the sale consideration of Rs.10,000/- on 22.10.1974 to Dr.C.Lalitha, the vendor of defendant No.1 and Manorama Bai Dubey. An entry under Ex.B.3/duplicate pass book issued by the Syndicate Bank, would not establish the return of sale consideration paid by Manorama Bai Dubey or by her husband in connection with the suit schedule property. At the most, it can be said that there were some money transactions in between them. Had the sale consideration was returned, the parties would have brought into existence the proper conveyance deed. Had it been only a loan from the husband of Manorama Bai to the husband of the defendant No.1, the sale deed would not have been executed in the

name of defendant No.1 as well as Manorama Bai. Therefore, except the self-serving statement of DW.1 stating that the entire sale consideration was paid by the DW.1 and her husband, there are no independent witnesses and moreover there is no documentary evidence to substantiate the same. Under these circumstances, it can be said that a false defense has been set up by the defendants 1 and 2 to knock away the suit schedule property. In addition to the above documentary and oral evidence, there are other documents such as Exs.B.7 to B.15, which shows the payment of municipal taxes, revenue taxes, water cess etc by the defendant No.1 and Manorama Bai, the mother of the plaintiffs jointly. Ex.B.6-Original Assessment Order also reveals that the tax was assessed and made payable by the defendant No.1 and Manorama Bai. Further more, there is no independent witness to substantiate the exclusive possession and ownership of the defendants 1 and 2 over the suit schedule property. A feeble attempt was made to contend that Manorama Bai was dispossessed in November, 1996 and from that time onwards, the defendants are in exclusive possession and enjoyment of the suit schedule property. The said contention is not substantiated by any oral and documentary evidence. Even the documents Exs.B.1 to B.15 marked by the defendants do not establish the exclusive ownership and possession of the defendants over the suit schedule property as well as perfection of their adverse possession over the suit schedule property. The oral and documentary evidence adduced by both sides substantially establishes that the defendant No.1 and mother of the plaintiffs 1, 5 and 6 are the owners and are in exclusive possession over the suit schedule property. The

contentions raised on behalf of the defendants are also hit by the provisions of The Prohibition of Benami Property Transactions Act, 1988.

11. In the circumstances, point Nos.1, 2 and 3 are answered in favour of the plaintiffs and against the defendants. The Court below rightly decreed the suit and the appeal is liable to be dismissed.

12. For the foregoing reasons, the appeal is dismissed, confirming the judgment and decree dated 07.01.2004 in O.S.No.1619 of 1996, on the file of the V Senior Civil Judge, City Civil Court, Hyderabad. O.S.No.1619 of 1996 is of the year 1996 and the preliminary decree was passed on 07.01.2004 and since then much time has been passed. Therefore, the Court below is directed to complete the final decree proceedings, within a period of two months from the date of receipt of a copy of this order. Both the parties are directed to cooperate with the Court below in disposal of the suit. Miscellaneous Petitions, if any, pending in this Appeal shall stand closed. There shall be no order as to costs.

Dr.SHAMEEM AKTHER,J

Date :01.02.2019
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