

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T. AMARNATH GOUD

I.A.No.2 of 2020

in/and

A.S.No.7 of 2020

J U D G M E N T: (Per Hon'ble Sri Justice M.S. Ramachandra Rao)

1. This appeal is filed by the appellant herein challenging judgment and decree dt.18.10.2019 in OS.No.1176 of 2008 of the V Additional District & Sessions Judge, Ranga Reddy District.

The suit

2. The 1st respondent herein/plaintiff in the said suit had filed the said suit through a GPA Holder against the appellant and respondents 2 & 3 to declare that he is the sole, absolute and lawful owner of the suit schedule property, for recovery of possession thereof and for perpetual injunction restraining the appellant and respondents 2 & 3 from undertaking any constructions in the suit schedule property apart from costs.

3. The suit schedule property is plot No.49, forming part of Survey No.11/11, 11/12, 11/13 and part of Survey No.11 situated at Khanamet village, Sherilingampally Mandal, Ranga Reddy District.

4. The said suit was filed on 08.12.2008.

The plea of the 1st respondent/plaintiff in the Suit

5. The basis of the claim of the 1st respondent in the suit was a registered sale deed document No.8086/1982 dt.10.11.1982 executed in his favour by Sri Swamy Ayyappa Co-Operative Housing Society Limited.

6. According to the 1st respondent, some unknown persons trespassed into the suit schedule property on 02.11.2008, demolished a hut and threw out the articles of the watchman engaged by him; that the 2nd respondent/defendant No.1 threatened him stating that he had purchased the property, but the 2nd respondent did not produce any document; that the 2nd respondent forged the signatures of the 1st respondent, fabricated certain documents; that the 3rd respondent/defendant No.2 filed OS.No.223 of 2008 before Additional Junior Civil Judge, Kukatpally, for perpetual injunction against the 2nd respondent describing the 2nd respondent as the owner and later the appellant got impleaded therein; that the 2nd respondent remained *ex-parte*; the suit against the 3rd respondent was dismissed for non-payment of process; that the appellant filed written statement denying the plaint averments in O.S.No.223 of 2008 and claiming that he is the absolute owner of the property and that he purchased the suit schedule property under registered sale deed document No.202/2009 dt.01.01.2009; that the appellant also filed O.S.No.1848 of 2009 before the VII Additional Senior Civil Judge, Ranga Reddy District;

that the said suit was later compromised; that the appellant made constructions in the suit schedule property and let out the building constructed on lease to Sri Chaitanya Educational Committee on 18.05.2010.

7. It is the contention of the 1st respondent/plaintiff that he is a resident of United States of America; that after the purchase of the property, prior to its occupation by the defendants, he had applied for regularization to the Urban Land Ceiling Department of the Government of Andhra Pradesh which had floated a Scheme for its regularization; that the 1st respondent filed criminal complaint against the 2nd respondent before the IX Metropolitan Magistrate, Kukatpally; that the appellant and the respondents have no right, title or interest in the suit schedule property; and so the suit be decreed.

The plea of the appellant/3rd defendant

8. The appellant/3rd defendant filed written statement denying the averments of the plaint.

9. He contended that the GPA Holder of the 1st respondent/plaintiff cannot represent the plaintiff in respect of the suit schedule property because the GPA dt.07.10.2008 executed by the 1st respondent mentioned only Survey No.11 and not the sub-divisions thereof.

10. It is contended that the 1st respondent/plaintiff had sold the suit schedule property to Smt K.Sarala on 02.07.2001; the said Smt K.Sarala executed a regd. agreement of sale-cum-General Power of Attorney with Possession on 04.12.2008 in favour of one Vaddi Shashi Verma; that there was a rectification of the said document by a regd. rectification deed dt.01.01.2009 mentioning that Survey No.s 11/11, 11/12, 11/13 in which the suit schedule property is located falls under Sri Swamy Ayyappa Co-Operative Housing Society Limited, and by oversight this was not mentioned in the agreement of sale-cum-GPA with Possession dt.04.12.2008; that on 01.01.2009, the said Smt K.Sarala through her GPA Holder Vaddi Shashi Verma executed a registered Sale Deed in favour of the appellant transferring the suit schedule property to him; that he is the absolute owner and possessor of the suit schedule property.

11. It is contended that after purchase, when he started making construction, the GPA Holder of the 1st respondent started continuously encroaching into the suit schedule property and tried to grab it; that the 1st respondent abused the appellant in filthy language and threatened to kill him; and so he filed O.S.No.1848 of 2009 and obtained *ad-interim* injunction therein.

12. He denied that he fabricated any false documents. He admitted that he had let out the property on lease to Sri Chaitanya Educational Committee on 18.05.2010.

13. He stated that he had filed WP.No.1134 of 2012 before the High Court against the 1st respondent and others and obtained an injunction order and the same was still pending.

14. He also stated that the 1st respondent approached him with a compromise proposal for Rs.1,05,00,000/- and received from the appellant Rs.55,00,000/- on various dates. He also stated that he was ready and willing to pay the 1st respondent the balance amount of Rs.50,00,000/- to settle the dispute. It is contended that the claim in the suit is speculative and there is no cause of action in favour of the 1st respondent.

15. The respondents 2 and 3 remained *ex-parte*.

16. The 1st respondent examined his GPA Holder as PW1 and examined himself as PW2 and marked Ex.s A1 to A18.

17. The appellant did not lead any evidence.

The judgment of the trial court

18. By judgment and decree dt.18.10.2019, the Court below decreed the suit holding that the appellant had taken inconsistent pleas i.e., at one stage he had pleaded that he is the absolute owner under a registered Sale Deed and later at another stage he spoke about a compromise for Rs.1.05 Crores and having paid Rs.55 lakhs.

19. It observed that *though all these aspects are not placed through oral and documentary evidence, the admissions made in the written statement would disclose that it is the 1st respondent who is the absolute owner and possessor of the suit schedule property; there is no explanation from the appellant as to why he entered into sale agreement with 1st respondent and paid Rs.55 lakhs; by the date of the execution of the document in 2001 in favour of Smt Kamala, the 1st respondent was not in India and he could not have executed any document on 02.07.2001 in favour of Smt Kamala; and though the 2nd respondent had signed as a witness in the Agreement-cum-GPA dt.04.12.2008 but he is absconding.* The Court below therefore held that the appellant encroached the property of the 1st respondent, made constructions therein and leased out the property to an educational society. It also stated that the appellant and 2nd respondent did not cross-examine PW1.

The present Appeal

20. Assailing the same, this Appeal is filed.

IA No.1 of 2020

21. On 09.01.2020 in I.A.No.1 of 2020 this Court granted stay of all further proceedings pursuant to the judgment and decree dt.08.10.2019 in O.S.No.1176 of 2008 including execution of the same.

IA No.2 of 2020

22. I.A.No.2 of 2020 is filed to vacate the said order.

The Consideration by the Court

23. Heard Sri Gopinath Lakkineni, counsel for the appellant and Sri D.Ravi Sanjay, Counsel for the 1st respondent.

24. The counsel for the appellant contended that the 1st respondent had no title to the suit schedule property and the Court below did not analyze and discuss the evidence on record properly and on the basis of assumptions and presumptions decreed the suit erroneously.

25. The counsel for the 1st respondent however contended that the appellant had played fraud by fabricating documents to grab the property of the 1st respondent, that the 1st respondent being resident of U.S.A., and the appellant took advantage of his absence to deprive him of his property.

26. We have noticed the submissions of both sides.

27. The subject matter of the appeal/suit is property being Plot No.49 forming part of Survey No.11/11, 11/12, 11/13 and part of Survey No.11 of Khanamet village, Sherilingampally Mandal of Ranga Reddy District as mentioned earlier.

28. The claim of the 1st respondent is based on the registered Sale Deed document No.8086 of 1982 dt.10.11.1982 executed in his favour by Sri Swamy Ayyappa Co-Operative Housing Society.

29. No link document was filed by the 1st respondent to show how his vendor got the said property.

30. A Division Bench of this Court in **Secretary to Government, Revenue(Endowments) Department, A.P., Hyd. And others v. Sri Swamy Ayyappa Co-operative Housing Societies Ltd., Hyderabad and others**¹ considered the title of the vendor of the 1st respondent Sri Swamy Ayyappa Co-operative Housing Society Ltd. in the said case wherein it had claimed that it had purchased an extent of Ac.140.20 guntas in Survey No.s 11/8 to 11/18 situated in Khanamet Village of Ranga Reddy District from a trust called Gurukul Ghatkeshwar Trust which was a charitable institution falling under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 and A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987.

31. The Division Bench held that under both these statutes any alienation of the property of a charitable institution like the said trust can only be done with the sanction of the Commissioner of Endowments and that such alienation by the said trust to the Sri Swamy Ayyappa Co-operative Housing Society Ltd. is invalid, void

¹ 2003(6) ALD 225(DB)

ab initio and did not confer any valid title upon the purchasers. The

Bench observed:

“44. That a plain reading of the provisions referred to supra makes it abundantly clear that any alienation of immovable property belonging to any charitable institution or endowment without the prior sanction of the Commissioner shall be null and void. There cannot be any sale of immovable properties belonging to any Charitable or Religious Institution or Endowment without complying with the formalities specified in the said provisions.

45. A further reading of Section 81 of Act 30 of 1987 makes it abundantly clear that the Legislature intended to invalidate all the unauthorised alienations by way of sale, exchange or mortgage belonging to any Charitable or Religious Institution or Endowment without the prior sanction of the Commissioner or the Government, as the case may be. It is a clear legislative declaration. The provisions provide for the consequences of alienation of immovable properties belonging to a Charitable or Religious Institution or Endowment without prior sanction of the Commissioner or the Government, as the case may be, since all such transactions are declared as null and void and shall be deemed to have been never effected. Such transactions of alienations without the prior sanction of the Commissioner or the Government, as the case may be, confers no right, title or interest over such property in any person acquiring the property by such transaction and it further declares that all such properties alienated without the prior sanction of the Commissioner shall be deemed to be the property of the institution or the endowment concerned and any person in possession of such property shall be deemed to be an encroacher against whom appropriate proceedings under the Act could be initiated.

46. The provisions do not admit more than one interpretation. The requirement of prior sanction is mandatory in its nature and non-compliance thereof is fatal to the alienation so made. That grant of

sanction by the Competent Authority is not a matter of any empty formality or ritual. Sanction may be accorded only in cases where the Competent Authority considers that the proposed transaction is (i) prudent and necessary or beneficial to the institution, or endowment; (ii) in respect of immovable property which is uneconomical for the institution or endowment to own and maintain; and (iii) the consideration therefore is adequate and proper. It is not the satisfaction of those who are entrusted with the management of the institution concerned, but it is the satisfaction of the Competent Authority as provided for under the provisions referred to hereinabove. In such view of the matter, the so-called resolution purported to have been passed by the trust authorising its President to alienate the immovable properties of the trust on the ground that "retention of possession on the lands has also become highly impossible and it would be more beneficial to dispose of the lands, etc.," is of no consequence. Such resolutions cannot override the statutory provisions. The genuineness of resolutions itself is seriously disputed by the State as well as Fit Person about which we do not propose to make any further enquiry.

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*54. In **Chenchu Rami Reddy v. Government of A.P.**², the Supreme Court while interpreting the very Section 74 of the Act 17 of 1966 observed that the properties belonging to institutions or endowments must be jealously protected. "It must be protected, for, a large segment of the community has beneficial interest in it (that is the *raison d'etre* of the Act itself). The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the closest-and-best-attention approach to guard against all pitfalls. The approving authority must be aware that in such matters the trustees, or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible*

² 1986(1) SCR 989= MANU/SC/0372/1986MANU/SC/0372/1986

underhand deal or understanding with the purchasers at the cost of the concerned institution". The provision was held to be a mandatory one.

55. In the result, we hold that the transactions of sale of lands belonging to Trust by its President are invalid, void ab initio and the same do not confer any valid title upon the purchasers. The said transactions are hit by the mandatory provisions of the Act 17 of 1966 and as well as the Act 30 of 1987.

56. We are not impressed by the submission that the required sanction in law shall be deemed to have been granted since the Government as well as the Special Officer and Competent Authority, Urban Land Ceilings, granted exemption exempting the lands held by the Gurukul Ghatkeshwar Trust from the provisions of ULC Act. The submission does not merit any consideration.

57. For the aforesaid reasons, we are constrained to hold that the alienation of immovable properties belonging to Gurukul Ghatkeshwar Trust by its President is totally void and inoperative." (emphasis supplied)

32. Thus from this decision, it is apparent that the subject land was part of the land purchased by the said society from the Gurukul Ghatkeshwar trust, and the said alienation has been annulled by the Division Bench of this court. So no title passed to the said society, which is the 1st respondent's vendor, and so it could not have conveyed any valid title to the 1st respondent under the regd.sale deed Doc. No.8086 of 1982 dt.10.11.1982. So the 1st respondent's plea that he had purchased the suit schedule property and had a valid title to it, cannot be accepted.

33. When the above decision was confronted to the counsel for the 1st respondent, he did not say that the 1st respondent was unaware of it.

34. To a specific question put by the Court as to how the 1st respondent's vendor i.e., Sri Swamy Ayyappa Co-operative Housing Society Ltd. could have any valid title to the land claimed by the 1st respondent after the above decision of the Division Bench of this Court, and how the 1st respondent could acquire any valid title to the suit schedule property, he had no answer.

35. His only plea was that the appellant and the respondents 2 & 3 had committed fraud, fabricated documents, and therefore the appeal should be dismissed.

36. It is settled law that in a suit for declaration of title and recovery of possession, the plaintiff should succeed on the strength of its title and not on the basis of weakness of the defendants' case.

37. In **Jagdish Prasad Patel v. Shivnath**³ the Supreme Court held:

“44. In the suit for declaration of title and possession, the respondent-plaintiffs could succeed only on the strength of their own title and not on the weakness of the case of the appellant-defendants. The burden is on the respondent-plaintiffs to establish their title to the suit properties to show that they are entitled for a decree for declaration. The respondent-plaintiffs have neither produced the title document i.e. patta-lease which the respondent-plaintiffs are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue entries relied on by

³ 2019(6) SCC 82

them are also held to be not genuine. In any event, revenue entries for few khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title.

45. *Observing that in a suit for declaration of title, the respondent-plaintiffs are to succeed only on the strength of their own title irrespective of whether the appellant-defendants have proved their case or not, in **Union of India v. Vasavi Coop. Housing Society Ltd⁴**, it was held as under: (SCC p. 275, para 15)*

“15..” It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.” (emphasis supplied)

38. In view of this settled legal position, the 1st respondent cannot rely on the weakness in the case of the appellant at all.

39. We are of the opinion that the 1st respondent/plaintiff has no title to the subject property since his vendor was declared by this Court in **Secretary to Government, Revenue(Endowments) Department**’s case (2 supra) to be not having any title.

40. Consequently, the decree for declaration of title and recovery of possession granted by the trial Court in favour of the 1st respondent cannot be sustained.

41. Accordingly, the Appeal is allowed; the judgment and decree dt.18.10.2019 in OS.No.1176 of 2008 of the V Additional District &

⁴ 2014(2) SCC 269

Sessions Judge, Ranga Reddy District is set aside; O.S.No.1176 of 2008 filed by the 1st respondent against the appellant and other respondents is dismissed; and I.A.No.s 1 and 2 of 2020 in AS.No.7 of 2020 are disposed of accordingly. No costs.

42. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S.RAMACHANDRA RAO, J

T. AMARNATH GOUD, J

04th March, 2020.
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