

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
MONDAY ,THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND TWENTY
PRESENT

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER
SECOND APPEAL NO: 66 OF 2019

Appeal under section 100 of C.P.C. against the Judgment and Decree dt. 23-8-2017 made in A.S.No. 09 of 2017 on the file of the Principal District Judge at Mahabubnagar, preferred against the Judgment and decree, dt. 14-12-2016 made in O.S.No. 38 of 2009 on the file of the Junior Civil Judge, Jadcherla.

Between:

R.Narsimulu, s/o Sayanna, aged about 68 years, occ- Pensioner,
r/o Kethireddipally Village of Balanagar Mandal, Mahabubnagar District,
...APPELLANT/(Plaintiff/Appellant)

AND

1. Sugunamma, W/o Shiva Reddy, aged about 51 years, r/o Kethireddipally village Balanagar Mandal.
2. Promalatha, d/o Shiva Reddy, aged about 33 years
3. Sumitra, d/o Shiva Reddy, aged about 31 years Nos. 1 to 3 are r/o Kethireddipally village Balanagar Mandal.
4. V.Ram Reddy, s/o Ramakrishna Reddy, Aged 40 years, r/o Nandigam village of Kothur Mandal.

...RESPONDENTS(Defendants/Respondents)

IA NO: 3 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant ad-interim injunction restraining the 4th respondent from alienating the suit property i.e. Land in SyNo.167/E and 167 admeasuring Ac. 0.20 guntas., and Ac.1.30 guntas., total Ac. 2.10 guntas situated at Kethireddypally Village, Balanagar Mandal, pending disposal of the Second Appeal, and pass such other order or orders as this Hon'ble court deem fit and proper. SCHEDULE PROPERTY Agriculture land bearing SyNo.167/E and 167 admeasuring Ac 0.20 guntas., and Ac.1.30 guntas., total Ac. 2.10 guntas situated a Kethireddypally Village, Balanagar Mandal bounded by: East: Land of Plaintiff, West: Sadananda Reddy, North: Srinivasulu Land, South: Plaintiff Land.

Counsel for the Appellant:

SRI NAMBI KRISHNA

Counsel for the Respondent Nos 1 to 3:

Counsel for the Respondent No. 4:

SRI T.M.K. CHAITANYA

The Court made the following: JUDGMENT

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.66 OF 2019

JUDGMENT:

This appeal, under Section 100 of the Code of Civil Procedure, 1908 (CPC), is filed by the appellant/plaintiff aggrieved by the judgment and decree, dated 23.08.2017, passed in A.S.No.9 of 2017 by the Principal District Judge, Mahabubnagar, whereby the appeal filed by the appellant/plaintiff was dismissed confirming the judgment and decree dated 14.12.2016 passed in O.S.No.38 of 2009 by the Junior Civil Judge, at Jadcherla.

2. Heard the arguments of Sri Nambi Krishna, learned counsel for the appellant/plaintiff, Sri T.M.K.Chaitanya, learned counsel for the respondent No.4/defendant No.4 and perused the record. Respondent Nos.1 to 3/defendant Nos.1 to 3 refused to receive notices. Therefore, notice on respondent Nos.1 to 3/defendant Nos.1 to 3 is deemed to be served.

3. The appellant is the plaintiff, whereas, respondents are the defendant Nos.1 to 4 in the Original Suit. The parties hereinafter are referred to as they were arrayed in the Original Suit before the trial Court.

4. The case of the plaintiff is that on 28.08.2000, Mr.Shiva Reddy, husband of defendant No.1 and father of defendant Nos.2 and 3 borrowed an amount of Rs.1,30,000/- from him to perform the marriage of defendant No.3 by mortgaging the agricultural lands admeasuring Ac.0-20 gts in Sy.No.167/E and Ac.1-30 gts

in Sy.No.167 totally admeasuring Ac.2-10 gts situated at Kethireddypally Village, Balanagar Mandal (hereinafter referred as "suit schedule property"), and also house property situated in the same village. Thereafter, in the month of December, 2000, defendant No.1's husband died in a train accident without discharging the debt. Therefore, the plaintiff filed O.S.No.92 of 2002 seeking recovery of money against defendant Nos.1 to 3. Pending the said suit, the plaintiff filed I.A.No.515 of 2002 seeking attachment of the land and house property before judgment. On 3.2.2005 the said suit was decreed in favour of the plaintiff by the learned II Additional Senior Civil Judge (FTC), at Mahabubnagar against defendant Nos.1 to 3. Thereafter, plaintiff filed E.P.No.25 of 2005 for realization of the decretal amount, by way of attachment of the suit schedule property and house property. After receiving notices, defendants 1 to 3 took sufficient time for filing counter and alienated the suit schedule property to defendant No.4 under nominal registered sale deed on 20.3.2006 vide document No.2643 of 2006. Since the said transfer is made during the pendency of the proceedings, the same is void and illegal. Hence the suit for cancellation of sale deed dated 20.03.2006.

5. On the other hand, the defendant No.1 filed written statement admitting the relationship stated by plaintiff with defendant Nos.2 & 3 and deceased Shiva Reddy and also admitted the death of her husband. The defendant No.1 denied that her husband borrowed an amount of Rs.1,30,000/- from the plaintiff to perform the marriage of her second daughter. She

submitted that to discharge the debts borrowed by her husband during his lifetime she sold the suit schedule property to defendant No.4 for a valuable consideration under registered sale deed and delivered possession to him. The present suit is barred by limitation and since the plaintiff is not a party to the said registered sale deed, he cannot seek for cancellation of the same. Further, as the plaintiff did not obtain any attachment order against the suit schedule property, the sale made by the defendant No.1 is valid and ultimately prayed to dismiss the suit.

6. Defendant Nos.2 and 3 remained *ex parte*.

7. Defendant No.4 filed written statement stating that he is a bonafide purchaser and that the plaintiff did not file the suit for recovery of money basing on the mortgage and the suit schedule property was not attached before judgment. Therefore, the plaintiff has no right over the suit schedule property and ultimately prayed to dismiss the suit.

8. Basing on the above pleadings, the trial Court framed the following issues:

1. *Whether the suit of the plaintiff is within limitation?*
2. *Whether the plaintiff is entitled for cancellation of sale deed No.2643/2006 dated 20.03.2006 as prayed for?*
3. *To what relief?*

9. During trial, on behalf of the plaintiff, P.Ws.1 to 3 were examined and got marked Exs.A1 to A5. On behalf of the defendant No.4, he himself got examined as DW.1. On behalf of

defendant Nos.1 to 3, none were examined and no document was marked.

10. The trial Court, after considering the oral and documentary evidence available on record, *vide* judgment and decree, dated 14.12.2016, dismissed the suit.

11. Aggrieved by the judgment and decree passed by the trial Court, the plaintiff preferred the subject appeal in A.S.No.09 of 2017 before the first appellate Court. The first appellate Court, after re-appreciating the entire evidence on record, *vide* judgment and decree dated 23.08.2017, dismissed the appeal confirming the judgment and decree passed by the trial Court. Aggrieved by the same, the plaintiff preferred this Second Appeal.

12. The Second Appeal is sought to be admitted on the following substantial questions of law:

- 1) Whether the pendency of the I.A.No 515 of 2002 filed by the plaintiff for attachment before judgment till the disposal of the suit in O.S.No.92 of 2002 amounts to subsistence of the attachment or not?**
- 2) Whether the transfer of the suit property during the pendency of the litigation is valid?**
- 3) Whether the 4th defendant who is only a pendente-lite purchaser is maintainable in law when under Section 52 of the Transfer of property Act is bound by the decree in the suit?**
- 4) Whether the transaction of sale between the defendant Nos.1 to 3 and 4th defendant is valid when the plea of the 4th defendant was not supported by the 1st defendant?**

13. Learned counsel for the appellant/plaintiff would contend that the judgments and decrees passed by both the Courts below

are perverse and against all probabilities of evidence. Both the Courts below ought to have appreciated that the suit in O.S.No.92 of 2002 filed for recovery of money was decreed by the II Additional Senior Civil Judge (FTC), at Mahabubnagar vide judgment and decree dated 03.02.2005. Pending the said suit, the plaintiff filed I.A.No.515 of 2002 seeking attachment of the suit schedule property and house property before judgment. Thereafter the plaintiff filed E.P.No.25 of 2005 seeking realization of the decretal amount by way of attachment of the suit schedule property and house property. After receiving notices in the said E.P, the defendants 1 to 3 sought time for filing counter and alienated the suit schedule property to defendant No.4 vide nominal sale deed dated 20.03.2006 bearing document No.2643/2006 with a malafide intention to defeat the decree dated 03.02.2005. As the defendant Nos.1 to 3 sold the suit schedule property to the defendant No.4 during the pendency of the proceedings before the Execution Court, the purchase made by defendant No.4 is hit by Sections 52 and 53 of Transfer of Property Act, 1882 (for short "T.P. Act") and ultimately prayed to allow the second appeal as prayed for.

14. On the other hand, learned counsel for the respondent No.4/defendant No.4 would contend that the suit is barred by limitation. The plaintiff who is not a party to the subject sale deed dated 20.03.2006 cannot seek for cancellation of the same. Though the plaintiff contended that pending suit in O.S.No.92 of 2002 before the II Additional Senior Civil Judge (FTC), at Mahabubnagar, he filed I.A.No.515 of 2002 seeking attachment

of the suit schedule property before judgment, Ex.A.2-certified copy of order dated 24.11.2004 reveals that said petition was closed as the suit was ripened for trial. Therefore, there was no attachment before judgment in respect of the suit schedule property. It is further contended that as there was no prohibition of sale of suit schedule property, Sections 52 and 53 of the T.P Act have no application to the case on hand. Both the Courts below are justified in passing the impugned judgments and there are no grounds to interfere with the same and ultimately prayed to dismiss the second appeal.

15. As seen from the material placed on record, the plaintiff filed the suit in O.S.No.92 of 2002, seeking recovery of money against the defendant Nos.1 to 3. Pending the said suit, the plaintiff filed I.A.No.515 of 2002 seeking attachment before judgment in respect of the suit schedule property. On 24.11.2004, the said I.A. was closed holding that the suit was ripened for trial. On 03.02.2005, the said suit was decreed by the II Additional Senior Civil Judge (FTC), at Mahabubnagar, in favour of the plaintiff. Thereafter the plaintiff filed E.P.No.25 of 2005 to realize the decretal amount and during the pendency of said E.P, the defendant No.1 along with defendant Nos.2 and 3 alienated the suit schedule property in favour of defendant No.4 vide registered sale deed dated 20.03.2006 bearing document No.2643/2006. To cancel the said sale deed, the plaintiff filed the subject suit in O.S.No.38 of 2009 before the Junior Civil Judge, at Jadcherla against defendant Nos.1 to 4. The trial Court dismissed the said suit vide judgment and decree dated

14.12.2016. Aggrieved thereby, the plaintiff preferred A.S.No.9 of 2017 before the first appellate Court and the said appeal was also dismissed.

16. The main contention of the appellant/plaintiff is that during the pendency of the proceedings before the Execution Court, the defendant No.1 along with defendant Nos.2 and 3 alienated the suit schedule property in favour of defendant No.4 under nominal registered sale deed dated 20.3.2006 vide document No.2643 of 2006 in order to defeat the decree dated 03.02.2005 passed in O.S.No.92 of 2002 by the II Additional Senior Civil Judge (FTC) at Mahabubnagar, in favour of the plaintiff. Therefore, the alienation made by the defendant No.1 along with defendant Nos.2 and 3 in favour of defendant No.4 is null and void and it is hit by Sections 52 and 53 of T.P. Act.

17. Here, it is apt and appropriate to extract Sections 52 and 53 of the Transfer of Property Act, which reads as follows:

Section 52 - Transfer of property pending suit relating thereto - *During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.*

Explanation- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and

complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

Section 53. Fraudulent transfer

(1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

In the instant case, the main substantial question of law raised by the appellant/plaintiff in the grounds of appeal is that whether the pendency of I.A.No.515 of 2002 filed by the plaintiff for attachment before judgment till the disposal of the suit in O.S.No.92 of 2002 amounts to subsistence of the attachment or not. As seen from Ex.A.2-certified copy of order dated 24.11.2004 passed in I.A.No.515 of 2002 in O.S.No.92 of 2002 by the learned II Additional Senior Civil Judge (FTC) at Mahabubnagar, the said I.A was closed holding that the suit was ripe for trial. Therefore, there was no attachment before

judgment in respect of the suit schedule property during the pendency of the suit in O.S.No.92 of 2002. Had there been an attachment of the suit schedule property as contended by the plaintiff, the appellant/plaintiff is justified in seeking cancellation of the subject sale deed. Section 52 of T.P. Act is meant to protect the pendente-lite interest of the parties in respect of the property in question. On evidence also nothing is made out that the defendant Nos.1 to 3 alienated the suit schedule property in favour of defendant No.4 in order to defeat the judgment and decree dated 03.02.2005 passed in O.S.No.92 of 2002. Admittedly the decree dated 03.02.2005 passed in O.S.No.92 of 2002 against the defendant Nos.1 to 3, is a bare decree for recovery of money. Merely because a decree for recovery of money is subsisting against the defendant Nos.1 to 3, that would not make the alienation bad. The right of the appellant/plaintiff is to recover the decretal amount and costs by following due process of law. Furthermore, on evidence no fraudulent transfer has been made by the defendant Nos.1 to 3 in favour of defendant No.4. There is also no evidence to hold that the disputed sale was made without consideration. Therefore, there is no violation of Section 53 of T.P. Act as contended by the plaintiff.

18. It is relevant to state that under the amended Section 100 of C.P.C., a party aggrieved by the decree passed by the first appellate Court has no absolute right of appeal. He can neither challenge the decree on a question of fact or 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 finding - are some of the questions, which involve substantial questions of law. It is evident from the record that both the Courts below have not considered any irrelevant evidence and their findings are not perverse. The submissions made by the learned counsel for the appellant/plaintiff in this appeal do not form substantial questions to admit the appeal and determine the same. It is concluded that there is no substantial question to admit the appeal and proceed with.

19. In the result, this Second Appeal is dismissed in *limini*. No costs.

The Miscellaneous Petitions pending, if any, shall stand closed.

//TRUE COPY//

Sd/-K.SREENIVASA RAO
DEPUTY REGISTRAR
SECTION OFFICER

To,

1. The District Judge, at Mahaboobnagar.
2. The Junior Civil Judge, Jadcherla, Mahaboobnagar.
3. One CC to SRI. NAMBI KRISHNA Advocate [OPUC]
4. One CC to SRI T.M.K. Chaitanya, Advocate [OPUC]
5. Two CD Copies

HIGH COURT

DR.SA.J

DATED:31/08/2020



JUDGMENT & DECREE

SA.No.66 of 2019

DISMISSING THE SECOND APPEAL
WITHOUT COSTS.

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21/9/20
HWT