

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Civil Miscellaneous Appeal Nos.342 and 343 of 2020

COMMON JUDGMENT:

Since these two appeals arise between the same parties out of the same suit, they are being disposed off by this common order.

2. These Civil Miscellaneous Appeals are preferred against the separate orders and decrees dt.06.02.2018 passed in Interlocutory Application No.904 of 2018 in O.S.No.1008 of 2018 and Interlocutory Application No.903 of 2018 in O.S.No.1008 of 2018 on the file of XIV Additional District Judge, Ranga Reddy District, at L.B. Nagar.

3. The appellant herein is plaintiff in the above suit.

The case of the appellant/plaintiff

4. The appellant/plaintiff filed the said suit against respondents to:
(i) declare a registered Sale Deed dt.04.06.1988 executed by husband of 2nd defendant – Yadagiri Reddy and 3rd defendant in favour of respondent nos.4 and 5 in respect of land admeasuring Acs.7.39 gts. which is part and parcel of the suit Schedule property, as not binding on him to the extent of his 1/4th share; (ii) declare another registered

Sale Deed dt.22.08.1988 executed by 1st respondent in favour of 4th respondent in respect of land admeasuring Acs.2.20 gts. which is part and parcel of the suit Schedule property, as not binding on the plaintiff to the extent of his 1/4th share; and (iii) to declare the registered General Power of Attorney dt.20.12.2006 executed by 5th respondent in favour of 4th respondent and two registered Sale Deeds dt.08.01.2007 bearing Document Nos.477 and 478 of 2007 executed by respondent nos.4 and 6 to 9 in favour of respondent nos.10 to 12 in respect of the suit schedule property, as null and void and not binding on him.

5. The case of appellant is that he is one of the sons of late Kashi Reddy; that respondent nos.1, 3 and one Yadagiri Reddy are his brothers; that Yadagiri Reddy died, and the 2nd respondent is the widow of the said Yadagiri Reddy.

6. It is the contention of appellant that the suit schedule property is a portion of the larger extent of Acs.33.37 gts. in Survey Nos.38, 39, 49 and 50 of Dasarapally Village which was owned by his father and his father's two brothers; that the plaint Schedule property is an extent of Acs.10.18 gts.; that Kashi Reddy died in the year 1980 leaving behind Acs.15.18 gts. which fell to his share; that Acs.5.00 gts. in Survey No.50 out of this extent was sold under a registered Sale Deed dt.24.11.1982 by the appellant's mother, the appellant and his 3 brothers under a registered Sale Deed dt.24.11.1982, and the remaining land left was Acs.10.18 gts. in which the appellant has joint

ownership and possession; and that the remaining land was not divided by metes and bounds between appellant and his brothers.

7. It is contended by the appellant that in February, 2018, the appellant came to know that respondent nos.11 and 12 claiming to be partners of 10th respondent-Firm and purchasers of the suit Schedule property from respondent nos.4 to 9 started interfering with the joint possession and enjoyment of the appellant over the suit Schedule property; that he was informed by respondents about the above referred Ex.P.4 – General Power of Attorney dt.08.12.2006 and Sale Deeds Exs.P.5 and P.6 dt.08.12.2007, executed by 4th respondent along with respondent nos.6 to 9 in favour of respondent nos.10 to 12.

8. He contended that these Sale Deeds Exs.P.5 and P.6 indicated that the 3rd respondent executed Ex.P.2 Sale Deed dt. 4.6.1988 for Acs.7.39 gts. in favour of respondent nos.4 and 5, and the 1st respondent executed Ex.P.3 Sale Deed dt.22.08.1988 for an extent of Acs.2.20 gts. in favour of 4th respondent; and that these Sale Deeds are not binding on appellant and he is deemed to be in joint possession and enjoyment thereof.

9. The appellant further contended that respondent nos.1, 3 and Late Yadagiri Reddy had no exclusive right to deal with the suit Schedule property; that respondent nos.10 to 12 have grabbed the entire suit schedule property in June, 2018 under the guise of Exs.P.5 and P.6 Sale Deeds dt.8.1.2007 even though the appellant had 1/4th

undivided share therein; that the said respondents even got mutated their names in the Revenue Records without notice to appellant; and that respondent nos.10 to 12 were trying to alienate the property by obtaining a lay-out.

Interlocutory Application Nos.903 of 2018 and 904 of 2018

10. Making these averments, the appellant / plaintiff filed I.A.No.903 of 2018 under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 restraining the respondents 11 to 12 from alienating, transferring or conveying title of the suit Schedule property; and I.A.No. 904 of 2018 under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 restraining the respondents 11 to 12 from changing or altering the nature of the suit Schedule property.

The stand of the respondent nos. 10-12

11. The 11th respondent filed counter-affidavit on his behalf and also on behalf of respondent nos.10 and 12 opposing grant of any relief to appellant in I.A. Nos.903 of 2018 and 904 of 2018.

12. The 11th respondent contended that there was no joint ownership and possession of appellant, and respondent nos.1 and 3 and Late Yadagiri Reddy; that purchasers under Exs.P.2 and P.3 have been in exclusive possession of the suit schedule property ever since their purchase on 04.06.1988 and 22.08.1988; and respondent nos.11 and 12, representing 10th respondent, had purchased the same from respondent nos.4 to 9 under Exs.P.5 and P.6 registered Sale Deeds

dt.8.1.2007 on the basis of Ex.P.4 – General Power of Attorney dt.8.12.2006; and that the said purchase is valid in law.

13. According to them, after the execution of Exs.P.2 and P.3 – Sale Deeds and after the death of Laxmamma, mother of appellant, there was a partition between appellant and his brothers' families, and the appellant was allotted more land in lieu of lands sold by respondent nos.1 to 3 amounting to Acs.27.25 gts. According to them, the 1st respondent got Acs.22.37 gts., Late Yadagiri Reddy's family got Acs.16.17 gts., and 3rd respondent got Acs.18.5 gts.

14. They contended that basing on this partition, the appellant and respondent nos.1, 3 and Late Yadagiri Reddy approached the Revenue Authorities, and the Recording Authority accordingly passed orders on 26.03.1992 (Ex.R-1 to R-4) for mutation of their names in the Revenue Records; and the appellant, with oblique motive and seeing the development of suit Schedule property by respondent nos.10 to 12, with an evil intention to extract money from them, filed the above suits.

15. They alleged that Sale Deed Exs.P.2 and P.3 executed by brothers of appellant in 1988 had never been questioned and challenged by appellant; that the appellant had knowledge of Exs.P.2 and P.3 Sale Deeds being executed in favour of respondent nos.4 and 5 in 1988 itself, and so the appellant's suit is barred by limitation and is misconceived.

The orders of the Court below

16. Before the Court below, the appellant marked Exs.P.1 to P.12, while respondent nos.10 to 12 marked Exs.R.1 to R.10.

17. By separate orders dt.06.02.2020, both the I.A.s were dismissed by the Court below.

18. The Court below, while noting that 4th respondent is the elder brother of 5th respondent and respondent nos.6 to 9 are family members of respondent nos.4 and 5, held that Kashi Reddy died in the year 1980 and thereafter Ex.R.5 – Sale Deed was executed by Laxmamma and her four sons including appellant for Acs.5.00 of land (Exs.R.5 dt.24.11.1982); that after that sale deed was executed Laxmamma also died, and Yadagiri Reddy, the husband of 2nd respondent, also died.

19. It then referred to the contention of appellant about the appellant noticing in 2nd week of February, 2018 the activities of defendant nos.10 to 12 and his plea that they grabbed the suit Schedule property in June, 2018, and held that respondent nos.4 and 5 had acquired title to Acs.2.20 gts. in Acs.7.39 gts. under Ex.P.3 – Sale Deed dt.22.08.1988 and Ex.P.2 – Sale Deed dt.04.06.1988; and that the 5th respondent executed Ex.P.4 – General Power of Attorney on 08.12.2006 in favour of 4th respondent.

20. The Court below then went on to hold that the appellant was also resident of the same Dasarapally Village where the suit schedule

property was also located, and it is unbelievable for him to say that for the first time he came to know about the execution of Exs.P.2 and P.3 – Sale Deeds in 1988 and other subsequent Sale Deeds which are registered documents in the 2nd week of February, 2018.

21. It held that Exs.R.1 to R.4 – Mutation Proceedings, relied upon by respondent nos.10 to 12 pointed out that mutation proceedings issued to the family members of Late Kashi Reddy including the appellant and his three sons, and in the said proceedings, except the suit Schedule land, all other lands were covered.

22. It concluded therefore that there was a partition between the brothers of appellant and the appellant; that appellant cannot be said to be ignorant of the occupation of suit Schedule property purchased under Exs.P.5 and P.6 – registered Sale Deeds; and that the appellant was feigning ignoring of these facts until the recent past.

23. It therefore held that the appellant did not approach the Court with clean hands and was not entitled to equitable relief of injunction.

The present Appeals

24. Assailing the same, the present Civil Miscellaneous Appeals are filed.

25. It is the contention of Sri Koppula Gopal, counsel for appellant that the order passed by the Court below is erroneous; that the Court below erred in disbelieving the plea of appellant that he had a 1/4th

share in the suit Schedule property; that respondent nos.1 and 3 and the husband of 2nd respondent could not have alienated the suit schedule properties by excluding the appellant; that the said transactions under Exs.P.2 and P.3 do not bind the appellant and he is entitled to ignore them; and that the Court below erred in holding that appellant did not approach it with clean hands.

26. Sri Srinivas Velagapudi, counsel appearing for respondent nos.10 to 12, refuted the said contentions and supported the order passed by the Court below. He also pointed out that the transactions under Exs.P.2 to P.6 are registered transactions, and as per Explanation No.1 to Section 3 of the Indian Registration Act, 1908 registration of a document is constructive notice and the appellant cannot plead ignorance of the transactions which took place in 1988.

27. He relied upon the decisions in **Hyderabad Co-operative Urban Bank Limited, Hyderabad represented by its Person In-Charge, Manoj Kumar and another vs. Andhra Pradesh Co-operative Tribunal, Hyderabad, represented by Chairman and others¹, Bina Murlidhar Hemdev vs. Kanhaiyalal Lokram Hemdev², Janardhanam Prasad vs. Ramdev³, and Sakuntalamma v. K.V. Govindaswamy and others⁴.**

¹ (2017) 6 A.L.T. 199

² (1999) 5 S.C.C. 222

³ (2007) 15 S.C.C. 174

⁴ 2015 (4) A.L.T. 696

28. We may point out that the suit Schedule lands are located in Dasarapally Village and the appellant admittedly resides in the same village.

29. Ex.P.2 – registered Sale Deed dt.04.06.1988 was executed by Yadagiri Reddy, the husband of 2nd respondent and 3rd respondent together in favour of respondent nos.4 and 5 in respect of Acs.7.39 gts in Sy.No.38, 39, 49 and 50 of Dasarlapally village.

30. Likewise, Ex.P.3 – registered Sale Deed dt.22.08.1988 was executed by 1st respondent in favour of 4th respondent in respect of Acs.2.20 gts. in Sy.No.38 of Dasarlapally village.

31. Respondent nos.4 to 9 executed Ex.P.5 – registered Sale Deed on 08.01.2007 in favour of 10th respondent; and Ex.P.6 – Sale Deed also on 08.01.2007 in favour of 10th respondent; and these two sale deeds cover the entire suit Schedule property.

32. All these transactions are registered under the Registration Act, 1908.

33. Under Section 3 of the Transfer of Property Act, “*a person is deemed to have notice*” of a fact when “*he actually knows that fact or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it*”.

Explanation I thereto says:

“Explanation I.—Where any transaction relating to immovable property is required by law to be and has been

effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration....” (emphasis supplied)

34. In **Janardhanam Prasad** (3 supra), the Supreme Court adverted to Explanation 1 to Section 3 of Transfer of Property Act and observed that *registration of a document is deemed to be constructive notice, and possession would also be constructive notice* as per Explanation 2 to Section 3 of the Registration Act.

35. This principle has been reiterated in **Bina Murlidhar Hemdev** (2 supra) as under :

“40. Now the rectification deed is a registered document. The agreement by the Sankhalas with the builder is dated 16-7-1994 and it specifically refers to the deed of rectification (dated 18-6-1992). The Jains’ agreement of sale dated 19-8-1994 with the builder no doubt omits to refer to the rectification deed and says that there are only some “claims” of the Lokrams. But the Sankhalas were obviously more truthful. Now if the agreement of the Sankhalas had put the builder on notice of the rectification deed specifically, as stated earlier, it is prima facie clear that the builder had actual notice and was obliged to enquire into its details. Thus there is actual notice. There is also constructive notice inasmuch as the rectification deed is a registered deed and Section 3 of the Transfer of Property Act comes into play.

41. ...

42. Inasmuch as the rectification deed is a registered deed, it is deemed to be notice to the builder in view of Section 3 of the Transfer of Property Act.” (emphasis supplied)

36. I had also taken a similar view in **Hyderabad Co-operative Urban Bank Limited** (1 supra).

37. In **Sakuntamma** (4 supra), I have followed the decisions in **Janardhanam Prasad** (3 supra) and **Hyderabad Co-operative Urban Bank Limited** (1) supra, and held that when there is a registered deed there is constructive notice of it as per Explanation 1 to Section 3 of the Registration Act, 1908.

38. This legal position is not disputed by the counsel for appellant.

39. The counsel for appellant however sought to rely on Article 110 of the Limitation Act which states the limitation period is 12 years for a plaintiff to file a suit when he is excluded from joint family property and when he intends to enforce his right to a share therein.

40. The applicability of the said provision would, no doubt, have to be considered in the suit.

41. But, in our opinion, it may not even apply *prima facie*, having regard to Exs.R.1 to R.4, which indicate that there was already a partition among the appellant and his brothers by 1992 itself, after Exs.P.2 and P.3 – Sale Deeds were executed in 1988, and more property appears to have been allotted to appellant probably on account of sale of the property under Exs.P.2 and P.3 by respondent nos.1 to 3.

42. Even otherwise, if Exs.P.2 and P.3 – Sale transactions which were registered in 1988 are taken into account, since the appellant cannot be said to be in joint possession as on date of filing of this suit, even if the 12 year period of limitation mentioned in Article 110 is taken into account, the right of appellant to enforce his right in joint family property stood extinguished by the year 2000, when the 12 year period expired.

43. The instant suit had been filed by appellant to enforce his alleged right in the joint family property in 2018, therefore appears *prima facie* to be barred by limitation as well.

44. In addition, we also agree with finding of the lower court that the appellant must have been aware of all these events having continued to live in Dasarapally Village where the plaint Schedule properties are located and would definitely have knowledge about the sale of the suit Schedule property by his brothers to respondent nos.4 and 5 and also by respondent nos.4 and 1 to respondent nos.10 to 12, and possession as on date of filing of the suit by the respondent 10, and that he suppressed the said facts and came to the Court with unclean hands.

45. We therefore find no valid reason to interfere with the order passed by the Court below refusing to grant temporary injunctions sought by appellant pending suit, either to restrain respondents 10 to 12 from changing the nature of the suit schedule property or to

restrain them from alienating, transferring or conveying the suit schedule property

46. Accordingly, the Civil Miscellaneous Appeals fail and are dismissed. No order as to costs.

47. As a sequel, miscellaneous applications pending if any, in these Appeals, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. AMARNATH GOUD

Date: 27.11.2020

Ndr

