

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

**SECOND APPEAL NOs.488, 489, 490, 491, 493, 494, 495, 496, 497,
499, 500, 716, 717, 718, 721, 722, 723, 724, 725 & 727 of 2015**

COMMON JUDGMENT:

1 Since all the second appeals are preferred aggrieved by the judgment and decree dated 23.12.2014 passed in various cross appeal suits on the file of the Court of the V Additional District Judge, Bhongir, wherein and whereby the learned V Additional District Judge set aside the judgment and decree dated 05.01.2009, with regard to rectification of various sale deed documents, passed in several suits on the file of the Court of the Senior Civil Judge, Bhongir, and since the point involved in all these second appeals is one and the same all these second appeals are disposed of by this common judgment.

2 For the sake of convenience, I refer to the facts of the case as were pleaded in S.A.No.488 of 2015.

3 M/s. Narne Estates Private Limited, represented by its Chairman and Managing Director, the first respondent herein, filed O.S.No.75 of 2005 on the file of the Court of the Senior Civil Judge, Bhongir against the appellant – N. Gopal Naidu and others for perpetual injunction restraining the appellant from alienating, transferring or creating any charge or mortgage in favour of any their parties in respect of the suit schedule property and direct the fourth defendant in the said suit to rectify the sale deed No.643/1/93, dated 23.02.1993 in respect of the name of vendee by substituting the name of the plaintiff (first respondent herein) in place of the name of the defendant No.1 (appellant herein).

4 For the sake of convenience, parties to these second appeals, will hereinafter be referred to as they were arrayed before the Court below.

5 The plaintiff contended that the first defendant, by playing fraud, obtained sale deeds in respect of suit schedule property in his name instead of the plaintiff though the purchase of suit schedule property was with the funds of the company and hence the plaintiff prayed for the relief of permanent injunction. The plaintiff further prayed for rectification of name in the sale deed directing the Sub-Registrar concerned to strike out the name of the first defendant as vendee and mention the name of the plaintiff in the sale deed.

6 The trial Court, after framing appropriate issues, held that the plaintiff is entitled to the relief of permanent injunction. But, in so far as the second issue relating to the rectification of the sale deed is concerned, the trial Court held that the plaintiff is not entitled to the said relief since the plaintiff has not sought for the relief of declaration of title to the suit schedule property. The trial Court further observed that the Court fee is chargeable under section 21 of the A.P. Court Fee and Suits Valuation Act, 1956, however, the plaintiff filed a fixed court fee of Rs.300/- under Section 47 of the Court fee Act and that Section 47 is not intended for the purpose of seeking a relief in respect of immovable property not covered by other sections and when a relief is not covered by other sections of the Act, the fee is payable only under section 21 of the Act and hence the plaintiff is not entitled to seek any relief for rectification of name in the records of the Sub Registrar

concerned. By judgment and decree dated 05.01.2009, the trial Court decreed the suit partly, granting perpetual injunction restraining the first defendant from alienating, transferring or creating charge or mortgage in favour of third parties in respect of the suit schedule property and dismissed the rest of the claim.

7 Aggrieved by the same, the unsuccessful plaintiff preferred Cross Appeal Suit No.4 of 2012 on the file of the Court of the V Additional District Judge, Bhongir. The lower appellate court, after reappraising the entire material available on record, both oral and documentary and by following the ratio laid down in ***Sheo Murat Vs. Ram Muran {AIR 2004 SC 267}*** and ***State of Karnataka Vs. K.K. Mohandas {AIR 2007 SC 2917}*** and also in view of Section 26 of the Specific Relief Act, allowed the appeal by judgment and decree dated 23.12.2014. The lower appellate court observed that the first defendant played played on the plaintiff since Ex.A.5 agreement would clearly show that the first defendant, being director and authorizing the plaintiff to pursue the transactions on behalf of the plaintiff, obtained Ex.A.8 sale deed in his favour. In Ex.A.5 agreement it is manifestly clear that D.2 and D.3 agreed to sell the property in favour of the plaintiff and that they also received the sale consideration from plaintiff in respect of the suit schedule property. The lower appellate court further held that the findings of the trial Court is contrary to Section 26 of the Specific Relief Act since there is nothing in Section 26 of the said Act that relief of rectification cannot be granted unless relief of declaration is sought.

8 As stated supra, aggrieved by the judgment and decree of the learned V Additional District Judge, Bhongir, dated 23.12.2014, the first defendant preferred this second appeal.

9 The learned counsel for the appellant – first defendant by framing as many as nine substantial questions of law, submitted that the plaintiff failed to prove the fraud alleged to have been played by the first defendant, the suit schedule property is not that of the plaintiff company but is self acquired properties of the first defendant, the first defendant was never appointed as Paid Director of the plaintiff company and that the rectification is permissible only by the parties to the instrument and by none else and since the plaintiff is not party to the instrument, such relief cannot be granted. The learned counsel for the appellant / first defendant relied on the ratio laid down in ***Joseph John Peter Sandy Vs. Veronica Thomas Rajkumar***¹.

10 As could be seen from the record and the judgments of both the courts below, both the courts, keeping in view of the recitals of Exs.A.5 and A.8, have concurrently held that the first defendant, in the capacity of Paid Director, played fraud on the plaintiff. Therefore, the decision relied on by the learned counsel for the appellant first defendant in Joseph John Peter Sandy case (1 supra) has no application to the facts of the case.

11 Further, the lower appellate Court has categorically held that in view of Section 26 of the Specific Relief Act the plaintiff is entitled to seek the relief of rectification.

¹ LAWS (SC) 2013 319

12 Therefore, all the questions of law raised by the learned counsel for the first defendant / appellant are purely questions of fact, which were elaborately dealt with by the courts below and there is no substantial question of law left to be decided in this second appeal. This Court, sitting under Section 100 CPC cannot re-appreciate factual aspects, which were considered and held by both the courts below, once again. Only when there is any error apparent on the face of the record with regard to the legal proposition, this Court will certainly interfere with the judgments of the courts below.

13 The finding of the lower appellate Court with regard to the rectification of the sale deed, in view of Section 26 of the Specific Relief Act, needs no interference.

14 Hence the second appeal is liable to be dismissed. Having regard to the observations and findings given in this Second Appeal, and since the point involved in all the remaining second appeals is one and the same, they are also liable to be dismissed.

15 In the result, all the Second Appeals are dismissed at the admission stage. No order as to costs. Miscellaneous petitions, if any, pending in these second appeals also stand dismissed.

T. AMARNATH GOUD, J.

Date: 28.9.2021

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