

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SMT. JUSTICE P.SREE SUDHA
APPEAL SUIT Nos.924 AND 941 OF 2018**

COMMON JUDGMENT
(*per* Justice P.Sree Sudha)

1. Since both these appeals arise out of a common judgment and since the issue involved is also one and the same, they are being disposed of by this common judgment.
2. The challenge in these appeals is to the common judgment and decree dated 11.10.2017 in O.S.Nos.823 and 827 of 2006 on the file of the learned XVI Additional District and Sessions Judge, Ranga Reddy District at Malkajgiri, whereunder and whereby the Court below decreed both the suits partly. Aggrieved by the same, the second defendant-Mekala Mahender in O.S.No.823 of 2006 filed A.S.No.924 of 2018 and the second defendant-Mekala Murali in O.S.No.827 of 2006 filed A.S.No.941 of 2018.
3. The appellant in A.S.No.924 of 2018 is the second defendant in O.S.No.823 of 2006 and the appellant in A.S.No.941 of 2018 is the second defendant in O.S.No.827 of 2006. Respondent Nos.1 to 6 in A.S.No.924 of 2018 are the plaintiffs in O.S.No.823 of 2006 and respondent Nos.1 to 6 in A.S.No.941 of 2018 are the plaintiffs in O.S.No.827 of 2006. For the sake of convenience, the appellants herein are referred to as the second defendant and the respondents herein are referred to as the plaintiffs.
4. The above suits are filed seeking declaration that the registered gift deeds bearing Document Nos.8783 of 2006 and 8784 of 2006 both dated 26.10.2006 in respect of suit property consisting of four

mulgies in upper floor and rear side open land with commercial portions bearing No.42-967 (42-967/1, 2, 3, 4) (Old No.42-112/A) ground and first floor with Plot No.350/1 in Sy.Nos.360/1, 361/1, 361/2 and 368/8 situated at Jawahar Nagar, Moulali under Malkajgiri Municipality, Ranga Reddy District, admeasuring 601 square yards out of 1202 square yards, as null and void and for grant of permanent injunction restraining the defendants from alienating the suit property and for damages of Rs.6,00,000/-.

5. Plaintiff Nos.1 to 5 in both the suits are children of Shankar Rao and Plaintiff No.6 in both the suits is the son of Plaintiff No.5. The second defendant in both the suits are the grandsons of Mekala Martahnda Rao. The father of Plaintiff Nos.1 to 5, M.Keshava Rao-the first defendant and one Marthanda Rao are brothers. The father of Plaintiff Nos.1 to 5 was the owner of the suit property and acquired the same under a consent final decree in O.S.No.44 of 1968 dated 20.12.1969 on the file of the learned I Additional Chief Judge, City Civil Court, Secunderabad. The first defendant and Marthanda Rao are parties to the said final decree.

6. It is the case of the plaintiffs that Mekala Shankar Rao, father of Plaintiff Nos.1 to 5, obtained permission for construction in the name of the first defendant, since the registered sale deed was standing in his name. Subsequently, he has constructed nine mulgies in the said property and all the mulgies were let out to various tenants and he was collecting rents.

7. It is the further case of the plaintiffs that though the first defendant has no right or possession over the suit property, he has executed a gift deed dated 26.10.2006 in the name of the second

defendant, and hence, the said gift deed is null and void and the same is not binding on the plaintiffs. The plaintiffs apprehend that there is every possibility of creating charge over the suit property and hence, they filed the present suits.

8. The second defendant filed separate written statements, in similar way, contending that Plot No.350/1 was allotted to the father of the plaintiffs as per the consent decree in O.S.No.44 of 1968, but possession was not taken by the plaintiffs' father. The first defendant perfected his title over Plot No.350/1 as he was in possession of the same for more than the statutory period of 12 years. In the year 1986, he obtained permission for construction of first floor from Malkajgiri Municipality under Permission No.G1/902/1986 dated 31.12.1986. Accordingly, he has constructed a building in the said property in ground plus first floor pursuant to the said construction permission. He also obtained water and electricity connections for the said building. The suit property was assessed in his name in the municipal records. He let out the property to various tenants and collecting rents.

9. It is further stated that Mulgi No.8 was let out to Rathan Lal immediately after construction. The first defendant filed R.C.No.5 of 2003 for eviction and obtained possession in E.P.No.284 of 2004. Rathan Lal filed O.S.No.1783 of 2002 in which he admitted payment of rents to the first defendant. His father was well aware of the above facts. The title of the father of the plaintiffs over Plot No.350/1 was extinguished. Gift Deed dated 26.10.2006 executed by the first defendant in favour of the second defendant is true and valid and binding on the plaintiffs. The orders passed in R.C.No.5 of 2003 on

the file of Principal Junior Civil Judge, East and North Ranga Reddy District, became final and hence, they prayed to dismiss the suits.

10. Adverting to the above pleadings, the Court below framed the following issues.

- 1) Whether the registered gift deed dated 26.10.2006 is to be declared as void.
- 2) Whether the plaintiff is entitled for permanent injunction as prayed for.
- 3) To what relief.

11. In order to prove the respective contentions, K.Lalitha-first plaintiff in O.S.No.823 of 2006 was examined as P.W.1 and T.Shalini-first plaintiff in O.S.No.827 of 2006 was examined as P.W.2. They have also examined N.S.Laxman as P.W.3. The plaintiffs in both the suits marked exhibits A.1 to A.73. The second defendants in both the suits were examined as D.Ws.1 and 2 in both the suits.

12. Considering the oral and documentary evidence adduced by both the parties, the Court below decreed both the suits partly and held that the gift deeds dated 26.10.2006 in respect of suit property executed in favour of the second defendant in both the suits declaring them as null and void and restrained the defendants in both the suits from alienating the suit property, however, the Court below dismissed the relief of damages. Challenging the same, the second defendant in both the suits filed the present appeals, on the following grounds:

- 1) The Court below ought to have seen that plaintiffs without seeking the relief for declaration of title could not seek for cancellation of the Gift Deed and at the best setting aside of the Gift Deed be an ancillary relief.
- 2) The plaintiffs failed to seek for declaration of title in spite of the fact that the second defendant denied the title of

the plaintiffs' father and the first defendant exercised right of ownership.

- 3) Plaintiffs having admitted in para 11 of the plaint that the building of the suit property was granted in the name of the first defendant, could not contend that late Mekala Shankar Rao was the owner of the building
- 4) The Court below failed to see that the ownership of the building and land could be distinct and separate, the plea of the plaintiffs regarding ownership of the building though the building plan stands in the name of the first defendant is hit by Benami Prohibitions Act, 1988.
- 5) The Court below failed to see that notwithstanding the compromise decree in O.S.No.44 of 1968, the possession remained with the first defendant and the fact that construction of the building was made by him itself is a proof of it.
- 6) The Court below failed to see that the plaintiffs did not file any document to substantiate the plea raised in para 14 of the plaint that Zilla Parishad of Ranga Reddy District acquired an area of 239 square yards from the original extent of 1202 square yards since the Zilla Parishad has no power under law to acquire the land.
- 7) The alternative plea of adverse possession is sustainable as the conduct of the first defendant is evident in the plaint which shows hostile possession from 1986 when the building was constructed.

13. In the light of the above grounds, the following points that arise for consideration in these appeals.

- 1) Whether the Court below is erred in decreeing the suits?
- 2) To what relief.

14. The relationship between the parties is admitted. Obtaining consent decree in O.S.No.44 of 1968 is also an admitted fact. The main controversy is with regard to construction of the building and possession of the suit property of the first defendant by adverse possession.

15. Heard both the counsel and perused the entire record.

16. A perusal of the common judgment clearly shows that the Court below failed to frame the issue with regard to adverse possession and also in respect of damages. It is argued by the learned counsel for the appellants that the building plan and the building are in the name of the first defendant and that he has been collecting the rents to the knowledge of the plaintiffs and thus he perfected his title by adverse possession. Apart from the same, the plaintiffs have not adduced any evidence to prove that their father constructed the mulgies. He has also argued that Section 4 of the Benami Prohibition Act, 1988 debars the parties from claiming as a defence raising the plea of benami.

17. A perusal of the evidence on record would show that there is no evidence regarding construction of the building. The main controversy is with regard to validity of the gift deeds. The plaintiffs before the Court below ought to have taken the plea of declaration of title as the title was denied by the defendants. Although the suit property fell to the share of the plaintiffs' father, as per the consent decree, the first defendant pleaded that the plaintiffs have not raised any objection when he was constructing the building, though the construction was to their knowledge.

18. Having heard both the counsel, we are of the opinion that there is no evidence placed before this Court as to who constructed the mulgies and how the plaintiffs are entitled for the relief of declaration to declare the Gift Deeds as null and void without declaration of title. No reasons whatsoever are forthcoming from the common judgment as to why the relief of damages was dismissed.

19. In the light of the foregoing reasons, this Court finds that the subject matter of the appeals should be remanded to the Court below for framing the issues with regard to adverse possession and also the eligibility for damages and whether the suit is maintainable without seeking the relief of declaration of title. It is also to be decided whether the building was constructed by the father of the plaintiffs or by the first defendant.

20. In the result, both the appeals are allowed remitting back both the suits to the Court below for answering the above issues by duly giving an opportunity to both the parties for adducing additional evidence and decide the matters on merit in accordance with law. As the suits are of the year 2006, the Court below is directed to dispose of the same as expeditiously as possible.

21. Miscellaneous Petitions, if any, pending in these appeals shall stand closed in the light of this common judgment.

P.NAVEEN RAO,J

P.SREE SUDHA,J

7th DECEMBER, 2021

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