

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL No.1232 of 2013

JUDGMENT :

This Second Appeal is arising out of the judgment dated 29.04.2013 in A.S.No.12 of 2011 on the file of Special Sessions Judge for SC & ST (POA) Act, 1989-cum-Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, confirming the judgment and decree dated 29.07.2010, passed in O.S.No.1404 of 2003 on the file of V Additional Senior Civil Judge (Fast Track Court), Ranga Reddy District.

2. For the sake of convenience, the parties are referred to as arrayed before the trial Court.
3. Heard learned Counsel for both the parties. Perused the record.
4. The appellants are the plaintiffs. The suit was filed for cancellation of registered sale deed bearing document No.4161/2001, dated 08.06.2001 as null and void; to declare the same as not binding on the plaintiffs and to grant perpetual

injunction against the defendants from interfering with the peaceful possession and enjoyment over the suit schedule property and to restrain the 1st defendant from alienating the suit schedule property.

5. The case of the plaintiffs is that they are in possession and enjoyment of the suit schedule property to an extent of Ac.5-00 gts., in Sy.No.586 at Nadargul village of Saroornagar Mandal, Ranga Reddy District, having purchased the same from one Syed Kareemuddin, Syed Raheemuddin and Syed Basheeruddin under an agreement of sale dated 27.03.1980, by paying consideration and further took possession of the property. It is the further case of the plaintiffs that subsequently, the MRO has issued proceedings vide B/254/84 for validation of the agreement, dated 27.03.1980, collected a fee of Rs.2,855/-, stamp duty of Rs.2,680/-, registration charges of Rs.175/- and issued pattadar passbooks in favour of plaintiffs. As defendant No.1 started interfering with their peaceful possession, the plaintiff had filed the suit in O.S.No.783 of 2001 on the file of Principal Junior Civil Judge (East and North), Ranga Reddy District for injunction and obtained *ad interim* injunction. Subsequently, the suit was dismissed on 23.04.2002 without

considering the passbook issued by the revenue authorities. Further, defendant No.1 has filed O.S.No.665 of 2002 on the file of Principal Junior Civil Judge (East and North), Ranga Reddy District for injunction against the husband of deceased/ plaintiff No.1 and *status quo* was granted by order dated 11.06.2002. It is the specific contention of the plaintiffs that the defendants have colluded and pressed the registered document No.4161/2001, dated 08.06.2001 and started grabbing the valuable property of the plaintiffs. The 1st plaintiff's vendors purchased the land under registered document No.1662/1979, dated 20.03.1979 for valuable consideration from his father. The sale deed is perfected by prescription and by adverse possession over the suit schedule property and the 2nd defendant has no right to sell the property to the 1st defendant in view of the link document No.1662/1979, dated 20.03.1979, and therefore, the title created by the defendants over the suit schedule property is false, null and *void ab initio* and prayed to decree the suit.

6. On the other hand, a detailed written statement has been filed by the defendants denying the averments of the plaint. The

defendants denied the possession and enjoyment of suit schedule property by the plaintiffs and also about purchase of the suit schedule property from Syed Kareemuddin, Syed Raheemuddin and Syed Basheeruddin under an agreement of sale dated 27.03.1980 and also passing of valuable consideration. It is the specific plea of the defendants that the 2nd defendant and other persons never passed any receipt admitting or acknowledging the receipt of sale consideration, but the husband of 1st plaintiff, taking advantage of certain signed papers, might have created the documents, and therefore, the plaintiff cannot seek any relief for cancelling the sale deeds of the defendants. It is also the contention of the defendants that there cannot be any validation of any document, more particularly with regard to the agreement of sale in view of Section 5 of ROR Act and if a person who is having any unregistered document and is in possession for a continuous period of 12 years, only then, the said document can be validated, and therefore, prayed to dismiss the suit as devoid of merits.

7. Basing on the pleadings, the trial Court has framed the following issues for trial:

“1. Whether the plaintiff is entitled for cancellation of sale deed dated 08.06.2001 and it is not binding on the plaintiff ?

2. To what relief ?

8. During the course of trial, on behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A-1 to A-17 were marked. On behalf of defendants, DW.1 was examined and Exs.B-1 to B-32 were marked.

9. On considering the oral and documentary evidence on record, the trial Court has dismissed the suit with a finding that neither the oral evidence of plaintiffs nor their documents inspire the confidence of the Court on any aspect and plaintiffs have miserably failed to prove their case beyond preponderance of all probabilities, there are no merits for cancellation of Ex.A-1 and the plaintiffs are not entitled for the relief as prayed for.

10. Being aggrieved by the same, the unsuccessful plaintiffs preferred an appeal vide A.S.No.12 of 2011 on the file of Special Sessions Judge for SC & ST (POA) Act, 1989-cum-Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar.

11. The first appellate Court, after hearing the parties and considering the material on record, has framed the following point for consideration:

“Whether the plaintiff is entitled for the declaration of sale deed, dt.08/06/2011 as null and void ?

12. On considering the contentions of the parties and material on record, the first appellate Court has dismissed the appeal confirming the judgment of the trial Court.

13. Being aggrieved by the judgment of the first appellate Court, this second appeal is filed by the appellants/plaintiffs, raising the following substantial questions of law along with the grounds of appeal:

“(a) Whether the Courts below are correct in dismissing the suit filed for cancellation of sale deed dated 8.6.2001 marked as Ex.A1 without properly appreciating the legal factual aspect that Ex.A2 agreement of sale dated 27.3.1980 in favour of the plaintiff with respect to the suit schedule property of Ac.3-21 guntas which is included under total extent of 5 Acres in Sy.No.586 of Nadergul village has been validated long after her possession by valuation proceedings dated 23.5.1998 which became final and the name of the plaintiff is indicated

in revenue records and in pahanies for several years confirming her possession.

- (b) Whether the Courts below are correct in dismissing the suit when admittedly the plaintiff proved her long standing possession from Ex.A2 dated 27.03.1980 being supported with the other documents marked as Ex.A4 to A16 and the burden shifts on the defendant No.2 to prove his title for alienating the schedule property under Ex.D1 dated 8.6.2001 and the non-examination of the 2nd defendant alleged vendor of 1st defendant substantially proves that the alienation is contrary Section 6 of the Transfer of Property Act i.e., without any title which effects the right of the plaintiff.
- (c) Both the Courts below failed to appreciate that the 2nd defendant who is claiming right over the schedule property which is being alienated in favour of 1st defendant has initially no right to convey or execute any sale deed in favour of anybody including the 1st defendant when the plea of 2nd defendant is that the schedule property he alienated under Ex.B1 is derived from a partition that affected in between the 3 brothers, but no document is filed to initially substantiate his case that he got schedule property under partition and right to convey the same to others as such the sale deed under Ex.B1 is hit by the provisions of Section 6 (h) of T.P.Act and Section 23 of Indian Contract Act 1872 and also U/s.31 of the Specific Relief Act 1877.
- (d) The Courts below ought to have allowed the suit when the plaintiff admittedly proved Ex.A2 coupled with Ex.A4 to A16 and the proceedings

of the M.R.O. became final, the title of the plaintiff along with her long standing uninterrupted possession is proved and the failure on the part of the 2nd defendant to convey the title with ownership is ignored nor proved either by filing any document or by entering into the witness box.

- (e) The lower appellate Court ought to have allowed I.A.No.1229 of 2011 filed for receiving the additional document which are pahanies and 13-A Namoonna to render substantial justice to the plaintiff which are not only confirms the title of the plaintiff but also mutation effected in her favour which has remained unchallenged and non-consideration of the said document supporting the documents already filed will establish the case of the plaintiff beyond reasonable doubt to allow the suit.
- (f) The Courts below had failed to looked into the crucial documents marked under Ex.A-series in a proper prospective manner which establish the title and possession of the plaintiff which leads to the consideration of the relief sought in the suit by setting aside Ex.A1 sale deed dated 8.6.2001.
- (g) The Courts below ought to have noted and allowed the suit when both the defendants jointly filed a written statement with a plea that the husband of the original plaintiff have used the blank signed papers for the agreement Ex.A2 which was remained unchallenged after validation and later took a plea that the document is a forged document which are contradicting to each other and that nullifies the case of the defendant admittedly when both the

defendants failed to enter into the witness box and DW-1 who is husband of defendant No.1, who is not a party to the proceedings deposed about the purchase and as such the suit is liable to be allowed on considering the documents under exhibit A-series.

- (h) The lower appellate Court failed to note that the original plaintiff died after chief examination and one of her son who came on record as 7th plaintiff deposed as PW-1 as the husband of the plaintiff could not depose as he is suffered with heart attack after demise of the original plaintiff and the evidence of PW-1 is itself sufficient to prove the suit claim basing on exhibit A-series more particularly when validation became final on Ex.A2 the title of the plaintiff is proved and the burden on the 2nd defendant to prove his title or possession is not proved either by giving evidence or to prove his share of five acres under partition in Sy.No.586.
- (i) After the disposal of the first appeal, the 2nd defendant filed O.S.No.362 of 2013 against the 1st defendant seeking for cancellation of the sale deed dated 8.6.2001 which shows that the total transaction went under Ex.A1 is fraud to cause serious injury to the plaintiff and the instrument is voidable against the plaintiff.”

14. A perusal of the above substantial questions of law would show that they all relate to the findings of fact by both the Courts below but not on law. Section 31 of the Specific Relief Act

envisages as to when the cancellation of document may be ordered.

The said Section reads as under :

“31. When cancellation may be ordered.—

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

15. In the judgment of Hon’ble Supreme Court in **Jamila Begum v. Shami Mohd.**,¹ their Lordships have held that a registered document carries with a presumption that it was validly executed and it is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law.

16. As per the above proposition, it is for the plaintiff to prove that the registered sale deed bearing document No.4161/2001,

¹ (2019) 2 SCC 727

dated 08.06.2001 is not genuine, and thus, it has to be declared as null and void and further the document has come into existence, in collusion with the defendants, in order to grab the property of the plaintiffs. It is an admitted fact that the plaintiffs are seeking relief basing on an unregistered agreement of sale which is said to have been validated by the revenue authorities after receiving the stamp duty and penalty and thereupon, a pattadar passbook was issued. Hence, it can be construed that the right of the plaintiff over the suit schedule property cannot be conferred basing on an unregistered document, that too, basing on the revenue record, which is validated by the revenue authorities on payment of stamp duty and penalty. It is the entire case of the plaintiffs that they are in possession of the property and under the guise of the registered sale deed bearing document No.4161/2001, dated 08.06.2001, the 1st defendant is trying to interfere with the peaceful possession and enjoyment of the property of the plaintiffs.

17. At this juncture, it is relevant to mention that I.A.No.1 of 2022 is filed by the appellants, under Order 41 Rule 27 r/w. Section 151 of CPC seeking to receive the website copy of the judgment

dated 25.03.2019 passed in O.S.No.362 of 2013 on the file of the I Additional District and Sessions Judge, Ranga Reddy District as additional evidence in this second appeal. It is the contention of the learned counsel for appellants that a suit is filed by the 2nd defendant against one Sama Prabhakar Reddy and four others to cancel the registered sale deed dated 08.06.2001 and to declare the registered sale deed dated 13.07.2005 as illegal, null and void and to grant injunction restraining the defendants and the I Additional District and Sessions Judge, Ranga Reddy was pleased to decree the suit canceling the sale deed dated 08.06.2001 as illegal, null and void and also granted injunction against Sama Prabhakar Reddy and others from alienating the plaint schedule properties to third parties. It is important to note that the plaintiff is not the party to the suit i.e. O.S.No.362 of 2013. It is the contention of the learned counsel for appellants that the same relief is sought by the appellants before the trial Court as well as before the first appellate Court, which was dismissed. Therefore, prayed to allow this Second Appeal, as the I Additional District and Sessions Judge, Ranga Reddy decreed the suit O.S.No.362 of 2013 on 25.03.2019.

But the said contention cannot be considered, as the facts and circumstances of the case on hand are different.

18. Admittedly, the relief sought by the appellants herein is for cancellation of the registered document bearing No.4161/2001, dated 08.06.2001 and as per the website copy of the judgment in O.S.No.362 of 2013, the said sale deed was cancelled by the I Additional District and Sessions Judge, Ranga Reddy, and therefore, there is no necessity for the appellants to seek adjudication in the second appeal in view of getting the relief of cancellation of the said sale deed vide judgment dated 25.03.2019 in O.S.No.362 of 2013, though they are not parties to the said proceedings. Both the Courts have given concurrent findings dismissing the relief sought by the appellants herein. As already stated supra, the competent civil Court has declared the document as null and void. But, the same cannot be considered in this Second Appeal, as appellant is not the party to the above said suit. Further, it is the contention of the appellants that the orders in O.S.No.362 of 2013 , dated 25.03.2019 have attained finality, as no appeal is preferred against the said orders. Therefore, this Court is

of the considered view that there is no further need or necessity to interfere with the findings of the trial Court.

19. Admittedly, the second appeal is filed in the year 2013 and it is still coming up for admission, though it underwent numerous adjournments. Both the Courts below have given concurrent findings as to the facts.

20. It is pertinent to mention that there is limited scope under Section 100 of CPC while dealing with the appeals by the High Courts. In a Second Appeal, if the High Court is satisfied that the case involves a substantial question of law, only then, this Court can interfere with the orders of the Courts below. On perusal of the entire material on record, this Court is of the considered view that the orders of the Courts below are not perverse and there is no misreading of evidence, and therefore, in the absence of substantial question of law, it is not proper to interfere with the concurrent fact findings of the Courts below. Therefore, the Second Appeal deserves to be dismissed.

21. In view of the above observations, this second appeal deserves to be dismissed, as no substantial question of law is involved.

22. In the result, the Second Appeal is dismissed at the stage of admission, as devoid of merits. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 19.10.2022

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