

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL Nos.1125, 1126, 1122 & 1227 of 2013

COMMON JUDGMENT :

Second Appeal No.1125 of 2013 is arising out of the judgment dated 08.08.2013, in A.S.No.69 of 2011 on the file of II Additional District Judge, Warangal, confirming the judgment and decree of the trial Court dated 21.06.2011, passed in O.S.No.712 of 2006 on the file of II Additional Junior Civil Judge, Warangal.

2. Second Appeal No.1126 of 2013 is arising out of the judgment dated 08.08.2013 in A.S.No.67 of 2011 on the file of II Additional District Judge, Warangal, confirming the judgment and decree of the trial Court dated 21.06.2011, passed in O.S.No.712 of 2006 on the file of II Additional Junior Civil Judge, Warangal.

3. Against the counter claims of the defendant in O.S.No.712 & 713 of 2013, A.S.Nos.68 and 58 of 2011 are filed before II Additional District Judge, Warangal and they were dismissed vide common judgment dated 08.08.2013.

4. The appellant before this Court in all the four appeals is the defendant in O.S.Nos.712 and 713 of 2006. As they are arising

out of the common judgment, this Court is of the considerable view that a common judgment can be passed in these Second Appeals.

5. The brief facts in O.S.No.712 of 2006 are that the land admeasuring Ac.2-11 gts, in Sy.No.274 originally belongs to Tallapalli John, Tallapalli Yakub and Tallapalli Devdass, who are the sons of Tallapalli Yellaiah. The above said three persons sold the said land in Sy.No.274 of Vaddepalli Village to Pragathi Cooperative Housing Society represented by its President, Mettu Narasimha Reddy under a registered sale deed bearing document No.3482/1980 dated 15.07.1980. Further, the said Society converted the said land into house plots and sold them to its members. Plot No.24 admeasuring Ac.538.44 sq.yards was sold to one Kalakonda Jayaprada Devi vide registered sale deed bearing document No.3819/1980 who in turn sold it to the plaintiff vide registered sale deed bearing document No.7863/03 dated 31.10.2003 and delivered possession. Since then, the plaintiff was in possession and enjoyment of the suit schedule property. A suit is filed for declaration of title and permanent injunction against the

defendants who were claiming title as legal heirs of Tallapalli John, the original vendor.

6. A detailed written statement was filed by the defendant contending that his father never sold the property in favour of Pragathi Cooperative Housing Society. As such, the said deeds alleged by the plaintiff are not binding on the defendant. Further, the defendant contended that he was not party to the said sale deeds and he succeeded to the property after the demise of his father and became absolute owner of the property. It is the further contention of the defendant that his sons filed a partition suit against him vide O.S.No.21 of 2004, before the I Additional Senior Civil Judge, Warangal and the proceedings were closed after the Advocate Commissioner's report and the suit schedule property was partitioned between the defendant and his two sons. Hence, the defendants claim that they were in possession of the suit schedule property since the date of partition and therefore, prayed to dismiss the suit as it is devoid of merits.

7. Further, the defendant filed counter claim contending that his father sold Ac.1-22 gts to one Mathyas Reddy after obtaining

permission from ULC authorities vide A1/2267/1980 and his father executed a Will in respect of remaining land admeasuring Ac.0-29 gts in favour of the defendants.

8. Basing on the pleadings in O.S.No.712 of 2006, the trial Court has framed the following issues:-

- “1. Whether the plaintiff is entitled for declaration of his title to suit property?
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
3. Whether the defendant is entitled for counter claim in respect of the suit property?”

9. The brief facts of O.S.No.713 of 2006 are that the land admeasuring Ac.2-11 gts in Sy.No.274 of Vaddepalli originally belongs to one Tallapalli John, Tallapalli Yohan and Tallapalli Devadass and they sold the said property to Pragathi Cooperative Housing Society under registered sale deed bearing document No.3482/1980 dated 20.07.1980 and the said Society in turn converted the land into house plots and sold them to its members. The Society sold one plot bearing No.25 admeasuring Ac.303 sq.yards to Potlapalli Srinivasa Rao under registered sale deed

bearing document No.3841/1980, who in turn sold the property to the plaintiff vide registered sale deed bearing document No.8097/2003, dated 31.10.2003 and handed over the vacant possession of the suit schedule property to the plaintiff. Further, the plaintiff claims that the defendant who has no right over the suit schedule property is trying to interfere with the possession of the property. Therefore, the plaintiff was constrained to file a suit for declaration of title and injunction.

10. A detailed written statement was filed by the defendant contending that his father never sold the property in favour of Pragathi Cooperative Housing Society. As such, the said deeds alleged by the plaintiff are not binding on the defendant. Further, the defendant contended that he was not party to the said sale deeds and he succeeded to the property after the demise of his father and became absolute owner of the property. It is the further contention of the defendant that sons of the defendant filed a partition suit against the defendant vide O.S.No.21 of 2004, before the I Additional Senior Civil Judge, Warangal and the proceedings were closed after the Advocate Commissioner's report and the suit

schedule property was partitioned between the defendant and his two sons. Hence, the defendants claim that they were in possession of the suit schedule property since the date of partition and therefore, prayed to dismiss the suit as it is devoid of merits.

11. Further, the defendant filed counter claim contending that his father sold Ac.1-22 gts to one Mathyas Reddy after obtaining permission from ULC authorities vide A1/2267/1980 and his father executed a Will in respect of remaining Ac.0-29 gts of land by virtue of the said Will deed.

12. Basing on the pleadings in O.S.No.712 of 2006, the trial Court has framed the following issues:-

- “1. Whether the plaintiff is entitled for declaration of his title to suit property?
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
3. Whether the defendant is entitled for counter claim in respect of the suit property?
4. To what relief?”

13. It is relevant to mention that the trial Court has also passed common judgment in O.S.Nos.712 & 713 of 2006. It is also

important to note that the plaintiffs in both the suits are different but the defendant is one and the same. As both the plaintiffs are claiming their source of title from Pragathi Cooperative Housing Society and as the defendant is one and the same, the trial Court has conducted joint trial and recorded the evidence in O.S.No.712 of 2006.

14. The plaintiff in O.S.No.712 of 2003 was examined as P.W1 and got marked Exs.A-1 to A-5. Likewise, the plaintiff in O.S.No.713 of 2006 was examined as P.W1 and Exs.A-1 to A-4 were got marked. For the purpose of convenience, the plaintiff in O.S.No.712 of 2006 was mentioned as P.W.1 and the plaintiff in O.S.No.713 of 2006 was mentioned as P.W1(a). Likewise, the documents of the plaintiff in O.S.No.713 of 2006 are denoted as Exs.A.1(a) to A.4(a) to differentiate with the documentary evidence of O.S.No.712 of 2006.

15. On behalf of the defendants, Exs.B-1 to B-15 were marked and the defendant himself got examined as D.W.1. The evidence of P.Ws.2 to 4 was common in both the suits.

16. The trial Court after considering the oral and documentary evidence on record have decreed both the suits i.e., O.S.Nos.712 & 713 of 2006 declaring the respective plaintiffs as owners of the suit schedule property and also granted injunction against the defendants and the counter claims of the defendant in both the suits are dismissed.

17. Being aggrieved by the same, the defendant filed four appeals i.e., A.S.Nos.67 & 69 of 2011 as against the dismissal of the suits and A.S.Nos.58 & 68 of 2011 against dismissal of the counter claims.

18. The 1st appellate Court after hearing the appellant have framed the following points for consideration:-

- “1. Whether the lower Court is justified in granting declaration and permanent injunction in favour of the plaintiffs in O.S.No.712/2006 and O.S.No.713/2006?
2. Whether the documents submitted by the defendant are sufficient to establish his counter claim to the suit schedule property?”

19. After considering the rival contentions of both the parties, the 1st appellate Court dismissed all the appeals vide common judgment dated 08.08.2013 confirming the judgment and decree in O.S.No.712 of 2006 and O.S.No.713 of 2006 dated 21.06.2011, on the file of II Additional Junior Civil Judge, Warangal.

20. Being aggrieved by the common judgment in A.S.Nos.67, 69, 58 & 68 of 2011, the defendant filed these Second Appeals by raising the following substantial questions of law:-

- “a. Whether in the facts and circumstances of the case, the courts below are justified in granting the decree for declaration and permanent injunction for the entire property though the appellant has made out his independent title to an extent of 30 guntas out of the claim of the plaintiff’s vendor’s property from out of which the suit land is claimed under Ex.B8?
- b. Whether in the facts and circumstances of the case, the courts below vest with any jurisdiction to decide or declare the decree passed in O.S.No.21 of 2004 passed by a competent civil court as collusive without there

being an issued under order 14 rules 1 to 5 of CPC?

- c. Whether in the facts and circumstances of the case, the courts below are right in granting the relief of declaration resting the burden on the appellant commenting that the defendant/appellant has not made out his title to the property, and so the plaintiff/respondent is entitled for a decree, since it is settled law that in a suit for declaration the plaintiff must stand or fall on his own strength and the weakness in the defendant's/appellant case does not make him entitled to the relief of declaration?
- d. Whether in the facts and circumstances of the case, the transaction entered into concerning the whole and undivided ancestral property by sale binds all the other sharers who are not parties to the sale?
- e. Whether in the facts and circumstances of the case, the courts below are justified in granting the decree for declaration and injunction without there being any proof tendered in respect of sale deeds relief on by the

plaintiff/respondents, as it is the settled law that mere filing of documents by itself is not sufficient unless such documents are proved according to law?

- f. Whether in the facts and circumstances of the case, the courts below are correct in granting the decree for more than the extent in the sale deed, since it is well cherished principle of law that a person cannot get a decree for a declaration more than the extent claimed in the title deed?
- g. Whether in the facts and circumstances of the case, the courts are not in error in not drawing adverse inference for non-examination of the vendor or vendors vendor of the respondent/plaintiff under Section 114(g) of Indian Evidence Act?
- h. Whether in the facts and circumstances of the case, the courts below are right in drawing presumption under Section 90 of the Indian Evidence Act, in respect of sale deed dated 28.07.1980, though the said presumption does not extent to a certified copy?

- i. Whether in the facts and circumstances of the case, the findings of the courts below are legally sustainable in law since no discussion of oral and documentary evidence is under taken?
- j. Whether in the facts and circumstances of the case, the findings of the courts below are not perverse since they are based on surmises and conjectures?
- k. Whether in the facts and circumstances of the case, the decree and judgment of the 1st appellate court is legally sustainable under law since no points for consideration as required under Order 41 Rule 31 of CPC have been framed?
- l. Whether the judgments of the courts below suffer from inherent lack of jurisdiction particularly pecuniary, in the light of the provisions of the A.P.C.F & S.V.Act?"

21. It is an admitted fact that the Courts below have given concurrent findings on the question of fact.

22. It is contended by the learned counsel for the appellant that both the Courts below lack judicial approach and mis-appreciated

the facts and law. It is further contended by the counsel that Section 90 of the Indian Evidence Act, 1872 (for short 'the Indian Evidence Act') does not prove the contents of the document and they cannot be read as evidence. It is contended that if the best evidence is not produced by the plaintiff, the trial Court ought to have drawn presumption under Section 114 (g) of the Indian Evidence Act. It is also contended that there is difference between the extents of land mentioned in the plaint and Ex.A-1. But the trial Court has decreed the suit as per the plaint without reading the contents of Ex.A-1 and prayed to allow the Second Appeals by setting aside the decree and judgment in O.S.Nos.712 & 713 of 2006, on the file of II Additional Junior Civil Judge, Warangal.

23. On the other hand, the respondents contented that the contents of the counter-claims are contrary to the written statements and one cannot go beyond the pleadings. On one hand, it is contented that the father of the defendant never executed the sale deed and on the other hand, the counter claim discloses about the partition of the suit which was not mentioned in the written statement.

24. Heard the learned counsel for the appellant as well as the learned counsel for the defendants. Perused the entire record.

25. The contention of both the plaintiffs in O.S.Nos.712 & 713 of 2006 are that the land admeasuring Ac.2-11 gts in Sy.No.274 of Vaddepalli originally belong to Tallapalli John, Yakub and Devadass and they sold the same to Pragathi Cooperative Housing Society under Ex.A-4 (=Ex.A3(a)) on 15.07.1980 and delivered the possession.

26. It is the specific contention of the defendant that he succeeded to the land in Sy.No.274 after the demise of his father and that his father never sold the said property to Pragathi Cooperative Housing Society. Ex.A-4 is a registered sale deed which was executed on 15.07.1980 in the office of Registrar, Warangal. It is the specific finding of both the Courts below that the document is of 30 years old and presumption under Section 90 of the Indian Evidence Act can be drawn that it was duly executed by Tallapalli John and his two brothers which was attested by T.Israil and N.Wilson.

27. It is the specific contention of the defendant that as he is not a party to Ex.A-4, it is not binding upon him. Another contention of the defendant is that he succeeded the property after the demise of his father, that too by virtue of a Will deed i.e., Ex.B-9 dated 18.06.1997.

28. As per Section 103 of the Indian Evidence Act, whoever ascertains a particular fact, it is for them to prove. The burden of proof as to any particular fact lies on the person who wishes the Court to believe such fact.

29. It is the specific claim by the defendant that he inherited the property by virtue of Will deed. It is important to note that Section 68 of the Indian Evidence Act envisages that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian

Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed, is specifically denied.

30. As per the above said Section, it is for the defendant to prove that by virtue of the Will deed (Ex.B-9, dated 18.06.1997), he succeeded to the property of his father i.e., Tallapalli John and in order to substantiate it, he has to examine one of the attestors of the Will, but the record reveals that except oral evidence of D.W1, no other witness was examined to prove the contents of the Will. Therefore, it can be safely construed that the defendant failed to prove his title over the suit schedule property. On the other hand, Exs.A-1 to A-3 and Exs.A-1(a) to A-3(a) prove the title of the plaintiffs over the said property.

31. Any one of the party to the documents are to be examined before the Court. The plaintiffs themselves got examined and they have marked the documents i.e., registered sale deeds before the Court. Admittedly, Exs.A-1 to A-3 and Exs.A-1(a) to A-3(a) are not objected by the defendant while they are being marked.

32. Section 90 of the Indian Evidence Act envisages that where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation:- Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable. This explanation applies also to Section 81.

33. As per the said provision, plaintiffs in both the suits claim themselves to be the original owners of the property vide Exs.A-1 to A-3 and Exs.A-1(a) to A-3(a). Both the Courts have come to a conclusion that the said documents have come from proper custody

and were duly executed and therefore, presumption can be drawn. Therefore, the contention of the appellant is not tenable and there is no need to prove the document while drawing presumption under Section 90 of the Indian Evidence Act.

34. Section 114 of the Indian Evidence Act envisages that the Court may presume existence of certain facts and Section 114 (g) specifies that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

35. The above said Section cannot be applied to the present case as the plaintiffs themselves have produced the registered documents before the Court i.e., Exs.A-1 to A-3 and Exs.A-1(a) to A-3(a).

36. It is also pertinent to note that as per illustration (g), if a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family. But the plaintiffs never refused to produce the documents. In fact, they produced the documents before the Court below which are marked as Exs.A-1 to

A-3 and Exs.A-1(a) to A-3(a) and therefore, there is no question of causing injury to the feelings and reputation of the family. The said illustration is to be read along with Section 114(g).

37. Admittedly, the defendant has only filed the preliminary decree i.e., Ex.B-6 in O.S.No.21 of 2004 and judgment Ex.A-5 of the I Additional Senior Civil Judge, Warangal, but the final decree was not filed before the Court to prove that the partition was effected between him and his brothers.

38. The Commissioner's report i.e., Ex.B2, does not disclose the houses owned and basements constructed by specific persons in Sy.No.274. Though it is contended by the defendant that he is the owner of the land admeasuring Ac.0.29 gts in Sy.No.274, the Special Officer, Urban Land Ceiling, Warangal has declared that the said land in Sy.No.274 is falling under peripheral limits of Urban Agglomeration which is entitled to the exemption of 5 acres under G.O.Ms.No.733/revenue (UC-II) and there can be no objection to the use of land in Sy.No.274 for non-agricultural purpose. Therefore, no permission is required under Urban Land Authorities for using the land for non-agricultural purpose.

39. Admittedly, in a Second Appeal, it is for the Court to look into the substantial question of law but not the facts. Both the Courts below have concurrently given a finding that the plaintiffs in both the suits are the original owners and possessors of the suit schedule property. No substantial question of law is involved in the present Appeals though arrayed as substantial questions of law from 'a' to 'l' in the Memorandum of grounds.

40. As per Section 101 of the Indian Evidence Act, whoever ascertains a fact, it is for them to prove it. Therefore, initial burden is on the plaintiffs to prove their right over the suit schedule property as the suit is filed for declaration of title as well as for possession. Admittedly, Exs.A-1 to A-3 and Exs.A-1(a) to A-3(a) are the documents relied on by the plaintiffs to prove their title over the property. Exs.A-4 and A-4(a) are the market value certificates of the property. Therefore, both the Courts below have rightly held that the burden of the plaintiffs has been discharged by adducing oral and documentary evidence. In fact, Exs.A-3 and A-3(a) are the link documents which give clarity that the father of the

defendant has sold the property to Pragathi Cooperative Housing Society, who in turn, sold the property to the plaintiffs.

41. Further, 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, then only, the Court can interfere with the orders of the Courts below. In the present case, it is not proper to interfere with the concurrent fact findings of the Courts below, the absence of substantial question of law. Therefore, the Second Appeals deserve to be dismissed.

42. In the result, all the Second Appeals are dismissed confirming the judgments of the II Additional District Judge, Jagtial, Karimnagar District, in A.S.Nos.69, 67, 58 and 68 of 2011, dated 08.08.2013.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 26.12.2022

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