

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

FAMILY COURT APPEAL No.53 and 54 of 2008

COMMON JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

Since the facts of the case and the issue involved in both these appeals are identical and the since the parties to both these appeals are one and the same, both these appeals are taken up together and are being disposed of by this common judgment.

2. Family Court Appeal Nos.53 and 54 of 2008, under Section 19(1) of the Family Courts Act, 1984, are filed by the appellant/defendant, challenging the order, dated 30.11.2007, passed in FCOS No.109 of 2001 by the Judge, Family Court, Secunderabad, whereby, the Court below decreed the subject suit declaring the respondent No.1 herein/plaintiff No.1 as the owner of the suit property and dismissed the counter-claim of the appellant/defendant.

3. We have heard the submissions of Sri S.Lakshmi Narayana Reddy, learned Counsel for the appellant/defendant and Mrs. Padama Sharanappa, learned Counsel, representing Sri B.Nalin

Kumar, learned Counsel for the respondents/plaintiffs, and perused the record.

4. For convenience of discussion, the parties are hereinafter referred to, as per their array before the Court below.

5. The plaintiffs (respondent Nos.1 and 2 herein/wife of the appellant/husband and her father) filed the subject FCOS No.109 of 2001 before the Court below under Section 7(c) of the Family Courts Act, 1984, seeking declaration that the plaintiff No.1 is the exclusive owner of the suit property, i.e., open plot No.105, in Survey No.128/1, Kalyan Nagar, Venture-III, admeasuring 305 square yards equivalent to 255 square metres situated at Kalyan Nagar Venture-II, Yousufguda, Hyderabad, within the Municipal limits under M.C.H. Ward No.8, Block No.3 and bounded by North: Neighbour Plot No.104; South: Neighbour Plot No.106; East: 30 feet wide road; and West : Neighbours Plot No.96. In the said suit, the defendant filed counter claim seeking declaration that he is the owner of the suit property. The Court below, while negating the relief claimed in the counter-claim of the defendant, decreed the suit declaring that the plaintiff No.1 is the owner of the suit property. Aggrieved by the same, the defendant filed both these appeals.

6. Learned counsel for the appellant/defendant would contend that the impugned judgment and decree of the Court below is contrary to law and facts of the case. The entire sale consideration in respect of the suit property purchased under Ex.A1 i.e. Rs.4,91,050/- was paid by the defendant only. Plaintiff No.1 is only a name-lender to Ex.A1. Plaintiff No.1 did not contribute anything for purchase of the suit property. She, being the wife of the defendant, was made as Vendee No.1 in Ex.A1 along with the defendant, who is Vendee No.2. There is ample evidence on record to substantiate the same. Furthermore, there is Ex.B5-Undertaking executed by PW.1 dated 11.04.2001, wherein, the plaintiff No.1 has clearly stated that she was only a name-lender to Ex.A1. The suit property exclusively belongs to the defendant. Ex.B1-Statement of account issued by SBI, S.R.Nagar Branch, Ex.B2-Statement of Account issued by ICICI Bank reveals the payment of Rs.2,35,000/- in total towards the sale consideration in respect of the suit property purchased under Ex.A1. Though there is oral evidence of DW.1 and DW.2 to substantiate that the whole sale consideration in respect of suit property was paid by the defendant and that the plaintiff No.1 is only a name-lender, the

Court below erroneously rejected the counter-claim of the defendant and decreed the suit in favour of the plaintiff No.1. It is a fit case to allow the appeals as prayed for and ultimately, prayed to set aside the impugned order and allow the appeals as prayed for. In support of his contentions, learned counsel has placed reliance on the following decisions:

1. **Shyamal Kumar Roy Vs. Sushil Kumar Agarwal**¹
2. **Ch.Venkata Rao Vs.T.Ramakrishna**²
3. **Dokka Joganna Vs.Upadrasta Chayadevi**³
4. **Palevala Suryanarayana Vs. Mosa Kamaraju**⁴
5. **Ajodhya Prasad Bhargava Vs. Bhawani Shanker Bhargava and another**⁵
6. **Union of India and others Vs. Vasavi Cooperative Housing Society Limited and Others**⁶
7. **State of Madhya Pradesh Vs. Nomi Singh and Another**⁷
8. **Sajana Granites, Madras and another Vs. Manduva Srinivasa Rao and others**⁸
9. **Nakka Srinivas and another Vs. Nakka Yadagiri and others**⁹

7. *Per contra*, learned counsel for the respondents/plaintiffs would contend that the suit property was purchased under a registered sale deed, dated 24.07.2007. There is evidence of plaintiff No.1 who deposed as PW.1 and also admissions made by defendant who deposed as DW.1 to demonstrate that the entire sale consideration was paid by the father of the plaintiff No.1 (plaintiff No.2) to the vendor of Ex.A1 sale deed by name

¹ 2007(1) ALD 38 (SC)

² 1977 AIR (A.P.) 247

³ 1997 (5) ALT 628

⁴ 1998 (5) ALT 1

⁵ AIR 1957 Allahabad 1 (FB)

⁶ 2014 (2) SCC 269

⁷ 2015 (4) ALD 117 (SC)

⁸ 2002 (1) ALT 466 (DB)

⁹ 2017 (2) ALD 144 (DB)

R.Saraswathi. Ex.B5-Undertaking dated 11.04.2001 was prepared by the defendant, having obtained the signatures and thumb impression of plaintiff No.1 on a blank stamp paper stating that those signatures were taken to obtain electricity connection. There is evidence of PW.1 to that effect. There are many inconsistencies in Ex.B5-Undertaking executed by PW.1 on 11.04.2001. The Court below had meticulously dealt with Ex.B5 and negated the same. There is cogent and convincing evidence on record which proves that the plaintiff No.2 had paid the entire sale consideration on behalf of plaintiff No.1 and obtained Ex.A1 sale deed. No part of sale consideration was paid by the defendant as contended. Exs.B1 and B2, statement of account issued by SBI and ICICI Bank respectively, have no relevance in determining the subject matter of the suit as well as both these appeals. The Court below, after analyzing the entire oral and documentary evidence on record, is justified in decreeing the suit holding that the plaintiff No.1 is the owner of the suit property. The impugned order of the Court below is in consonance with law and facts. There are no merits in both these appeals and ultimately prayed to dismiss the both the appeals by confirming the order under challenge.

8. In view of the submissions made by both sides, the points that arise for determination in both these appeals are as follows.

1. *Whether Ex.B5-Undertaking executed by PW.1, dated 11.04.2001, is genuine and is safe to act upon?*
2. *Whether the judgment and decree, dated 30.11.2007, passed in FCOS No.109 of 2001 by the Judge, Family Court, Secunderabad, is liable to be set aside?*
3. *Whether the counter-claim made by the appellant/defendant is liable to be allowed as prayed for?*
4. *To what result?*

POINTS :

9. There is oral testimony of only DW.1 to the effect that he paid the total sale consideration in respect of the suit property purchased under Ex.A1. He did not choose to examine any person who witnessed the payment of sale consideration in respect of the suit property. Here it is pertinent to refer to the admissions made by the defendant (DW.1) in his cross examination, which reads as follows:

"It is true that the D.D. dated 29.02.2000 for Rs.5,00,000/- by PW.2 was taken on the name of R.Saraswathi and was handed over to PW.1 and she in turn gave it to defendant who paid to R.Saraswathi. R.Saraswathi is the vendor who sold the suit schedule property. It is true that this 5 lakhs D.D. dated 29.02.2000 towards the total sale consideration of the suit schedule property. It is true that the said D.D. for Rs.5lakhs was purchased by S.Surender who is son of PW.2 Banker certificate issued by Syndicate Bank, Brundavan Garden

Branch, Guntur. After receiving the D.D. She got executed sale deed in favour of PW.1 and defendant."

Further, there is Ex.A2-letter given by Syndicate Bank to establish that brother of PW.1 obtained a demand draft for Rs.5,00,000/- on 29.02.2000. There is oral evidence of PW.1 to that effect. The defendant, in his cross examinations, admitted that the demand draft dated 29.02.2000 for Rs.5,00,000/- was handed over to R.Saraswathi, the vendor of Ex.A1. The total sale consideration paid under Ex.A1 was Rs.4,91,050/-. So, the testimony of PW.1 and the admission made by the defendant/DW.1 in his cross examination substantiates that the entire sale consideration covered under Ex.A1 was paid to the vendor by the father of the plaintiff No.1 on her behalf.

10. Learned counsel for the appellant/defendant, relying on Ex.B1-statement of account dated 11.04.2021 issued by SBI, S.R.Nagar Branch and Ex.B2-statement of account dated 11.04.2001 issued by ICICI Bank, contended that the defendant withdrew Rs.35,000/- and Rs.2,00,000/- from SBI and ICICI Bank respectively on 11.04.2001 and paid towards sale consideration for purchase of the suit property. Here, it is apt to state that the sale deed under Ex.A1 was obtained by the parties on 27.04.2000. So it appears that the amount

withdrawn by the defendant in cash from the banks concerned is much subsequent to the execution of Ex.A1 sale deed. Under these circumstances, it cannot be said that the amounts withdrawn by the defendant from the banks concerned was for the purpose of payment of sale consideration for purchasing the suit property. Thus, Exs.B1 and B2 are not helpful to the defendant to establish that he had contributed sale consideration for purchase of suit property.

11. Learned counsel for the appellant/defendant would contend that Ex.B5-Undertaking executed by PW.1, dated 11.04.2001, is genuine and there is nothing to doubt the veracity of the said document. The contents of Ex.B5 reveals that in terms of settlement made on 29.02.2000, the defendant had paid Rs.1,50,000/- due to be paid to PW.2 (father of plaintiff No.1) and Rs.85,000/- towards maintenance to PW.1. However, as per the oral evidence of DW.2, there is no prior settlement at all. The whole dispute was settled as on the date of execution of Ex.B5. So the evidence of DW.2 is contrary to the averments of Ex.B5. In Ex.B5, though plaintiff No.1 admitted her signature and thumb impression, but however, she deposed in her evidence that her signatures and thumb

impressions were obtained on a blank stamp paper under the guise of obtaining electricity connection. Generally, the signatures/thumb impressions of spouses would be obtained on blank papers or forms and later they will be processed by filling the data subsequently, for the purpose obtaining electricity connection etc. Therefore, the evidence of PW.1 that her signature and thumb impression were obtained on blank papers for obtaining electricity connection cannot be discarded.

12. Learned counsel for the appellant/defendant would contend that the plaintiff had categorically admitted in Ex.B5 that she is only a name-lender to Ex.A1 sale deed. However, there is no clear cut admission on the part of the plaintiff No.1 to prove that the entire sale consideration was paid by the defendant and not by the plaintiff Nos.1 or 2. On the other hand, there is ample evidence on record as indicated above to prove that the entire sale consideration was paid by the father of PW.1 on behalf of plaintiff No.1 and there is evidence of PW.2 to that effect. As indicated above, there is no iota of evidence to substantiate that the sale consideration mentioned in Ex.A1 sale deed was paid by the defendant.

13. Further, it is pertinent that the subject suit was filed by the plaintiffs on 04.05.2001 and the defendant filed written statement/counter-claim on 31.03.2002. Curiously, there is neither mention with regard to existence of Ex.B5 in the written statement/counter claim filed by the defendant, nor a copy of Ex.B5 was filed along with the written statement/counter claim. Had Ex.B5 was in existence as on the date of filing written statement/making counter claim by the defendant, he would have mentioned the same in his written statement and would have filed a copy of the same along with his written statement. This circumstance proves that Ex.B5 was not in existence at all, as on the date of filing of written statement/making counter-claim by the defendant. In these circumstances, it is made out that the defendant took signatures of plaintiff No.1 on blank papers when there were cordial relations between them and later, the said blank paper is used by the defendant just before filing of the same before the Court, to defeat the claim of plaintiff No.1. It is contended on behalf of the plaintiff No.1 that Ex.B5 was fabricated and was invented to defeat the claim of plaintiff No.1. We find some force in the said submission, in view of the circumstances indicated above. In view of the totality of the circumstances, this Court has no hesitation to hold

that Ex.B5 is not genuine and it was fabricated and introduced at a later point of time to defeat the claim of plaintiff No.1. Further, in the cross examination of PW.1, she had categorically stated that the defendant took her signatures on five blank papers in March, 2001 for the purpose of electricity connection.

14. Even Ex.B5 does not satisfy the requirements of Section 17 of the Evidence Act, which reads as follows:

17. Admissions defined – *An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.*

It is settled law that an admission, to have an effect of substantive piece of evidence, should be voluntary in nature. Admissions do not carry a conclusive value, it is only limited to being *prima facie* proof. There is no obligation on the Court to accept all the statements as correct, and the Court may accept some of the statements as relevant and reject the rest. Any admission cannot be regarded as conclusive and it is open to both parties to show whether it is true or not. In the instant case, though plaintiff No.1 admitted her signature and thumb impression, but however, she deposed in her evidence that her signatures and thumb impressions were obtained on a blank

stamp paper under the guise of obtaining electricity connection. For the reasons mentioned above, this Court is of the considered opinion that Ex.B5 is a fabricated document and it is not helpful to the appellant/defendant to believe that there was an admission in relation to ownership of the appellant/defendant over the subject property by the respondents/plaintiffs.

15. We have gone through the decisions relied by the learned counsel for the appellant/defendant. While there cannot be any dispute with regard to the law laid down in the said decisions, the facts and circumstances of the said decisions are completely different from the facts and circumstances of the case on hand. Hence, the said decisions are not helpful to the appellant/defendant. Further, it is settled law that each case has to be decided on its own merit.

16. The Court below had elaborately dealt with all the aspects and rightly negated the contentions raised by the defendant, assigning reasons. The finding recorded and the conclusions reached by the Court below are in tune with the oral and documentary evidence on record. We do not see any legal infirmity in the order under challenge. The contentions raised on behalf of the appellant/defendant do not merit consideration.

Both these appeals are devoid of merit and are liable to be dismissed.

17. Accordingly, both the appeals are dismissed, confirming the order, dated 30.11.2007, passed in FCOS No.109 of 2001 by the Judge, Family Court, Secunderabad.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

01st November, 2022
DSU / BVV