IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE NINETEENTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

SECOND APPEAL NO: 257 OF 2024

Appeal under section 100 of C.P.C against the Judgment and Decree Dated 04.01.2024 made in A.S. No.50 of 2021 on the file of the Court of the X Additional Chief Judge, City Civil Court, Hyderabad preferred against the Judgment and Decree passed in O.S.No.244 of 2016 dated 25.10.2021 on the file of the Court of the XXII Junior Civil Judge, City Civil Court, at Hyderabad.

Between:

G. Raghavender, S/o G. Kalyandas, Aged about 50 Years, Occ. Chartered Accountant, R/o. H.No.3-5-1094/14, 1St Floor, Narayanaguda, Hyderabad.

...Appellant/Defendant

AND

1. G. Kalyandas, S/o. Late Sri. G. Kishan Rao, Aged about 87 Years, Occ. Chartered Accountant, R/o. H.No.3-5-1094/14, Ground Floor, Narayanaguda, Hyderabad.
2. G. Pavan Kumar, S/o. Kalyandas, Aged about 56 Years, Occ. Government Service, R/o. H.No.3-5-1094/14, Second Floor, Narayanaguda, Hyderabad.
3. G. Praveen Kumar, S/o. Kalyandas, Aged about 55 Years, Occ. Advocate, R/o. H.No.2-3-18/32, Tilaknagar, Golnaka, Hyderabad - 500013.

...Respondents/Plaintiffs

IA NO: 3 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to extend the interim orders dt. 28-06-2024 made in IA No. 1 of 2024 in SA No.257 of 2024, pending disposal of the main appeal, in the interest of justice.

IA NO: 2 OF 2024

BETWEEN:

1. G. Kalyandas, S/o. Late Sri. G. Kishan Rao, Aged about 87 Years, Occ. Chartered Accountant, R/o. H.No.3-5-1094/14, Ground Floor, Narayanaguda, Hyderabad.
2. G. Pavan Kumar, S/o. Kalyandas, Aged about 56 Years, Occ. Government Service, R/o. H.No.3-5-1094/14, Second Floor, Narayanaguda, Hyderabad.
3. G. Praveen Kumar, S/o. Kalyandas, Aged about 55 Years, Occ. Advocate, R/o. H.No.2-3-18/32, Tilaknagar, Golnaka, Hyderabad – 500013.

...Petitioners/Respondents/Plaintiffs

AND

G. Raghavender, S/o G. Kalyandas, Aged about 50 Years, Occ. Chartered Accountant, R/o. H.No.3-5-1094/14, 1St Floor, Narayanaguda, Hyderabad.

...Respondent/Petitioner/Appellant

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim order dt. 28-06-2024 passed in IA No. 1 of 2024 in SA No. 257 of 2024 and dismiss the above Second Appeal with exemplary costs.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings including execution thereof, pursuant to the impugned Judgment and Decree passed in A.S.No.50 of 2021, dt.04.01.2024 on the file of the X Additional Chief Judge, City Civil Court at Hyderabad, confirming the Judgment and decree passed in O.S.No.244 of 2016, dated 25.10.2021, by the court of the IX Junior Civil Judge, FAC XXII Junior Civil Judge, City Civil Court, at Hyderabad, pending final disposal of the Second Appeal.

Counsel for the Appellant : Sri V Ramakrishna Reddy

Counsel for the Respondents: Sri B Vamshidhar Reddy

The Court delivered the following: Judgment

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

SECOND APPEAL No.257 OF 2024

JUDGMENT:

1. This appeal has been filed assailing the Decree and Judgment dated 04.01.2024 in AS No.50 of 2021 passed by the X Additional Chief Judge, City Civil Court, Hyderabad, whereby, the Decree and Judgment dated 25.10.2021 in OS No.244 of 2016 passed by the XXII Junior Civil Judge, City Civil Court, Hyderabad has been affirmed.

2. Heard Sri V.Rama Krishna Reddy, learned counsel for the appellant and Sri B.Vamshidhar Reddy, learned counsel for respondents.

3. Briefly, stated the facts of the case are that respondent No.1/father and respondent Nos.2 and 3/ brothers of the appellant/defendant filed the suit *vide* OS No.244 of 2016 with a prayer to direct the appellant/defendant to vacate and handover the peaceful possession of the suit schedule property i.e., first floor premises bearing No.3-5-1094/14-A, Narayanaguda, Hyderabad (herein after referred as 'subject property') and also to pay future mesne profits at Rs.15,000/- per month together with interest @

12% per annum from 30.11.2015 till the vacant possession is delivered. The trial Court considering the evidence placed by both the parties, partly decreed the suit and directed the appellant/ defendant to vacate and handover the subject property within one month from the date of judgment. However, the prayer in regard to mesne profits was dismissed. Aggrieved by the judgment of eviction, appellant/defendant preferred an appeal vide AS No.50 of 2021. The appellate Court on re-appreciation of evidence, confirmed the trial Court judgment, against which, the present second appeal is filed.

4. Learned counsel for the appellant/defendant would submit that the relationship between respondent Nos.1 to 3/plaintiffs with the appellant/defendant and pleaded in possession of the property are not in dispute. Though the suit was filed for eviction, the plaintiffs were unclear as to how and when the appellant/defendant had entered into subject property. That apart, pleading that the schedule property is joint family property, a comprehensive suit seeking share has been filed vide OS No.37 of 2017 on the file of IX Additional Civil Judge, City Civil Court, Hyderabad. Further, in the written statement, the appellant/defendant had specifically pleaded that the subject property was purchased in the name of

respondent No.1/plaintiff with the contribution on his mother, maternal uncle and maternal grand-parents as such it is joint family property and he is co-sharer to the property. Furthermore, as per the suit claim, the respondent No.1/plaintiff No.1 had gifted the subject property to respondent No.2/plaintiff No.2, as such, he was divested with the title. Additionally, in the suit proceedings, respondent No.2/plaintiff No.2 remained silent and did not enter the witness box. For that reason, an adverse inference has to be drawn against the respondents/plaintiffs. In support of this plea, learned counsel cited Judgment of Hon'ble Supreme Court in case of "***Vidhyadhar v. Manikrao and another***"[1] and "***Iswar Bhai C.Patel vs. Harihar Behera***"[2].

5. Additionally, pleaded that the Courts below without any material, much less pleading and in the teeth of specific denial by the appellant/defendant erred in holding that the appellant/defendant is in permissive possession of the subject property. Therefore, granting decree of eviction is improper and prayed for intervention.

6. The submissions of learned counsels are given due consideration and I have perused the materials.

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[1] (1999) 3 Supreme Court Cases 573

7. As per the pleadings of the appellant/defendant, the subject property was purchased during the life time of his mother in the name of respondent No.1/plaintiff No.1 and he gifting the property under registered gift deed to plaintiff No.2/respondent No.2 in the year 1987 are not in dispute. Further, the appellant's/defendant's possession over the subject property as claimed by respondent Nos.1 to 3/plaintiffs is also in agreement. The above read facts coupled with the oral evidence of plaintiff No.1 as PW.1 coupled with the entries in document/ Ex.A1, the title of respondent No.1/plaintiff No.1 over the building including the subject property and gifting the same to respondent No.2/plaintiff No.2 can safely be concluded.

8. As per the plaintiffs, the appellant/defendant had forcibly entered into the subject property. This assertion is supported by the oral testimony. Thus, though denied, it has to be held that the respondents/plaintiffs in support of the pleadings had placed positive material.

9. On the other hand, the specific contentions of the appellant are that the building including the subject property was purchased from joint family funds, and he is co-sharer of the property. In this

[2] (1999) 3 Supreme Court Cases 457

suit, except his oral claim, no material demonstrating the contributions as asserted by him, to infer the status of joint family property and his entitlement as co-sharer. Nonetheless, as the appellant/defendant had filed another comprehensive suit for partition, these aspects shall remain open for determination basing on the evidence placed therein. However, by the evidence on record, it has to be held that the appellant had failed to put up any piece of material supporting his claim. That being the position, disallowing the claim of the appellant/defendant as to joint ownership of the building and subject property by the Courts below is justified.

10. In regard to the gift deed and the contention that the respondent No.2/plaintiff No.2 not entering into the witness box, the authorities cited by the appellant/defendant are pertaining to the suit for recovery of money, wherein specific assertion in the pleading has not been maintained by entering into witness box was considered and held that, in such circumstance adverse inference has to be drawn against that particular claim of the party. In the present case, the respondent No.2/plaintiff No.2 along with the other plaintiffs pleaded ownership of the subject property and prayed for eviction of the appellant/defendant. The contention that

his abstinence from the witness box deserves adverse inference. To note, the gift deed in favour of the respondent No.2/plaintiff No.2 is not in dispute, however, in the given situation at the best an adverse inference can be drawn against the gift deed. Even in absence of such deed, the ownership of the respondent No.1/plaintiff No.1 would remain irrefutable and it would not make out any favourable fact for the appellant/defendant.

11. Thus, the claim of the appellant that his case was not properly considered by the Courts below is evidently unsuitable. On the other hand, to rebut the substantial evidence placed by the respondents/plaintiffs and to prove the asserted fact of joint ownership of the subject property remained undischarged by the appellant/defendant. For these reasons this Court finds no tenable ground much less any substantial question of law for deliberation in the appeal. Resultantly, this appeal is liable to be and is accordingly dismissed.

12. Since the second appeal is dismissed and upon consensus between the counsels, the appellant shall vacate the suit schedule premises on or before 31.03.2025. No costs.

As a sequel, miscellaneous applications if any, stands closed.

Sd/- M. RAMANA KRISHNA
DEPUTY REGISTRAR

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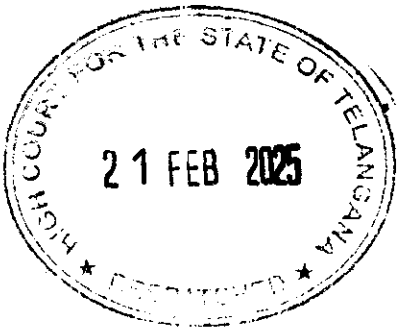
To,

1. Sri G. Raghavender, S/o. G. Kalyanda, CA, H.No. 3-5-1094/14, 1st Floor, Narayanaguda, Hyderabad.
2. The X Additional Chief Judge, City Civil Court, Hyderabad
3. The XXII Junior Civil Judge, City Civil Court, at Hyderabad
4. One CC to Sri V Ramakrishna Reddy, Advocate [OPUC]
5. One CC to Sri B Vamshidhar Reddy, Advocate [OPUC]
6. Two CD Copies

ADK/gh

HIGH COURT

DATED:19/12/2024



JUDGMENT+DECREE

2 DRAFTS

SA.No.257 of 2024

DISMISSING THE SECOND APPEAL

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12/2/25

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE NINETEENTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

SECOND APPEAL NO: 257 OF 2024

Between:

G. Raghavender, S/o G. Kalyandas, Aged about 50 Years, Occ. Chartered Accountant, R/o. H.No.3-5-1094/14, 1St Floor, Narayanaguda, Hyderabad.

...Appellant/Defendant

AND

1. G. Kalyandas, S/o. Late Sri. G. Kishan Rao, Aged about 87 Years, Occ. Chartered Accountant, R/o. H.No.3-5-1094/14, Ground Floor, Narayanaguda, Hyderabad.
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This Second appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Appellant Court and the Court of the First Instance and the material papers in the Suit and upon hearing the arguments of Sri V Ramakrishna Reddy, Advocate for the Appellant and of Sri B Vamshidhar Reddy Advocate for the Respondents.

This Court doth Order and Decree as follows:

1. That the Second Appeal be and hereby is dismissed;
2. That the Appellant shall vacate the suit schedule premises on or before 31-03-2025; and
3. That there shall be no order as to costs in this appeal.

Sd/- M. RAMANA KRISHNA
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The X Additional Chief Judge, City Civil Court, Hyderabad
2. The XXII Junior Civil Judge, City Civil Court, at Hyderabad
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ADK

HIGH COURT

DATED:19/12/2024

DECREE

SA.No.257 of 2024

DISMISSING THE SECOND APPEAL

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