

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

SECOND APPEAL NO: 435 OF 2024

Appeal under Section 100 of CPC against the Judgment and Decree dated 07-03-2024 made in A.S.No.43 of 2019 on the file of the Court of the Principal District Judge, Nagarkurnool, preferred against the Judgment and Decree passed in O.S.No.121 of 2013 dated 13-02-2019 on the file of the Court of the Junior Civil Judge, at Kollapur.

Between:

Mr. Ginnela Venkatesh @ Sarangi Venkateswarlu, S/o. Jambulaiah, Age 46 years, Occ. Business, R/o. Steel Shop No. 6, G.P. Complex Near Govt. Hospital, Kollapur Town and Mandal of Nagarkurnool District

...Appellant / Plaintiff

AND

Mr. Venkata Ramanamma, W/o. Ramudu, Age 60 years, Occ. Business, R/o. H.No. 1- 8- 74, Near Sri Sathya Sai Cinema Talkies, Kollapur Town and Mandal of Nagarkurnool District

...Respondent / Defendant

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 suspend the operation of the Judgment and Decree dated 07.03.2024 in A.S. No. 43 of 2019 on the file of Principal District at Nagarkurnool otherwise, I will be put irreparable loss and damages which cannot be compensated by any means.

IA NO: 2 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 extension of Interim Orders dt 30-10-2024 passed in IA No 1 of 2024 in SA No 435 of 2024 until disposal of the Second Appeal.

Counsel for the Appellant : Sri N Bhujanga Rao

Counsel for the Respondent : Sri Jagan Mohan Reddy Kotha

The Court delivered the following Judgment :

THE HONOURABLE SRI JUSTICE N. TUKARAMJI
SECOND APPEAL No.435 OF 2024

JUDGMENT:

This appeal is filed challenging the decree and judgment dated 07.03.2014 in AS No.43 of 2019 passed by the Principal District Judge, Nagarkurnool, whereby the judgment dated 13.02.2019 in OS No.121 of 2013 on the file of the Junior Civil Judge, Kollapur, has been inversed.

2. Heard Sri N.Bhujanga Rao, learned counsel for the appellant and Sri Jagan Mohan Reddy Kotha, learned counsel for the respondent.

3. The relevant facts in brief are that the appellant herein as plaintiff filed the suit in OS No.121 of 2013 seeking perpetual injunction against the defendant over the suit schedule 'A' and 'B' properties (schedule 'A' property is 150 Sq.yds of open plot and schedule 'B' property is 300 Sq.yds of open plot). The appellant/plaintiff case is that, the respondent/defendant without any manner of right or interest over the suit schedule properties, is interfering with his possession. As per the appellant, the schedule properties originally belonged to his father and the same were

gifted to him under registered deeds on 31.12.2012 and he is in possession and enjoyment of the property.

4. On the other hand, the respondent/defendant's case is that the plaint 'A' schedule property was the property of the plaintiff's father and he sold the same under an unregistered sale deed/Ex.B1 to one Krishna Murthy and B.Mohan Rao/DW.2 on 15.09.2003. From them, she purchased under unregistered sale deed dated 08.09.2005/Ex.B2, since then she is in possession of the property. Her further case is that she purchased plaint 'B' schedule property under another unregistered sale deed/Ex.B3 dated 19.09.1986 from the original owner S.V.K.B.A.Laxma Rao/DW.4 and the property was delivered to her on the date of the sale deed and she in possession of the property. Thus, seeking perpetual injunction against her over the suit schedule properties is un-sustained.

5. The trial Court, having regard to the evidence placed by the parties, decreed the suit with costs in favour of the appellant/plaintiff restraining the respondent/defendant from interference over the suit schedule properties. Aggrieved thereby, the respondent/defendant preferred the appeal. The appellate Court having reconsidered the material by observing that ~~the~~

unregistered sale deeds were proved by the respondent/defendant and the appellant/plaintiff failed to file any document establishing his possession, reversed the findings and set-aside the judgment of perpetual injunction passed by the trial Court. Thus, the plaintiff preferred this second appeal.

6. Learned counsel for the appellant/plaintiff would contest that the appellate Court had grossly erred in recording the findings of the title over the properties though the documents relied upon by the respondent/defendant are unregistered and would not convey any title. Thus, the appellate Court accepting the unregistered sale deeds/Ex.B1 to B3 and conclusively recording the title, without there being any material proving possession especially in the teeth of the admission that the suit schedule properties were purchased by the respondent/defendant under unregistered deeds, setting aside the injunction granted by the trial Court is unsustainable, hence prayed for interference in second appeal.

7. Learned counsel cited the authority between ***Tulasidhara and another v. Narayanappa and others***¹ to show that the formulation of substantial question of law in a case where reverse findings were recorded by the Courts below is *sine qua non* for

¹ (2019) 6 Supreme Court Cases 409

exercising the jurisdiction under Section 100 of the Code of Civil Procedure.

8. On the other hand, learned counsel for the respondent/defendant would plead that the documents filed by the appellant i.e., registered gift deeds/Exs.A1 and A2 does not disclose delivery of possession. Whereas, the unregistered sale deeds/Exs.B1 and B2 are reflecting delivery of possession. Therefore, the aspect of possession is evident by the document and the Courts below had positively considered such aspect. He further submits that the unregistered sale deeds were marked, without any objection and it is settled position that the unregistered sale deeds may be taken into account for collateral purpose including determination of possession. Thus, the appellate Court was proper in considering the documents and concluding the factum of possession over the property and dismissing the appellant/plaintiff's claim. Hence, prayed for dismissal of the Appeal.

9. I have carefully considered the submissions of the learned counsel and also the documents placed on record.

10. In the rival submissions, the preliminary question that arises for determination is whether the appellate Court had perversely

appreciated the facts and material in determining the prayer of perpetual injunction?

11. It is pertinent to note that, the appellant and respondent are siblings and children of PW-2. The appellant as PW-1 to prove the title over the suit schedule properties had placed the registered gift deeds/Exs.A1 and A2 and also examined his father as PW.2. In evidence, the PW.2 testified that he had purchased the suit schedule properties from the owner and they are self-acquired and he gifted them to his son/PW.1. In cross-examination he asserted that the suit schedule properties were purchased from the erstwhile Raja i.e., one Jagannatha Rao under two or three registered sale deeds and that those documents were stolen by the defendant and denied execution of any unregistered sale deeds in favour of Krishna Murthy and Monhan Rao.

12. In regard to the suit schedule 'A' property, the defendant placed the unregistered sale deeds/Exs.B1 and B2 on record and examined one of her vendors Mohan Rao as DW.2. The DW.2 though in the chief affidavit supported the version of defendant, in cross-examination clarified that the PW.2 obtained hand loan from Krishna Murthy and the suit schedule 'A' property was never sold

to Mohan Rao, but mortgaged to himself and M.Krishna Murthy as security towards hand loan.

13. This statement of DW.2 is effecting the root of Ex.B1 and the claim of unregistered sale or execution of the document. Further, it is well settled position that no one can transmit better title than what he/she has. Thus, the foundation of the defendant over the plaint 'A' schedule property under Ex.B-2 stands demolished and also the averments whatsoever therein. Pertinently, the defendant claimed that she had purchased the property from Krishna Murthy and Mohan Rao/DW.2 and they in turn said to have purchased from the PW.2. This stance itself is an admission as to the title of PW.2 over the schedule 'A' property. In the absence of foundation and any specific document showing possession of the defendant over the Schedule 'A' property and basing on the settled proposition that in the case of vacant land, the possession should be presumed basing on title, the plaintiff shall be held as in possession. As such, the conclusion drawn by the appellate Court in regard to paint 'A' schedule property is liable to be set aside.

14. So far as, suit 'B' schedule property is concerned, the plaintiff's case is that under Ex.A-1, he got title over the property. On the other hand, the defendant claiming the property under

Ex.B-3. Further, the defendant got examined her vendor as DW.4. The DW.4 deposed that, he sold the property under Ex.B-3 in favour of the defendant with the boundaries mentioned in the sale deed.

15. In Ex.A-1 the schedule 'B' property is in extent of 300 Sq.yds with the boundaries:

East: House of Jangala Pedda Chinthalaiah,
West : House of Jangala Motha Ramaiah
North: Saranga Eshwaraiah vacant plot
South: 10' feet road

Whereas, in Ex.B-3, the plot admeasuring 286 of Sq.yds with following boundaries:

East: Plot given to Jangala Chinthalaiah,
West: Plot given to Bitchagaala Ramulu,
North: Plot of vendors
South: Plot given to Saranga Venkateshwarlu

16. The above noted boundaries are clarifying the aspect that the plot claimed by the defendant under Ex.B3 is distinct to that of plaint 'B' schedule property. However, by the pleadings of the defendant, it is evident that the defendant is claiming the plaint 'B' schedule property to that of the property in Ex.B-3. Nonetheless, as the plaintiff and defendant claimed properties are distinct and as

the suit 'B' schedule property being the vacant land, in the absence of specific evidence showing possession over the property, the party with better title shall be held as in possession of the property (See **Anathula Sudhakar v. P. Buchi Reddy (Dead) By Lrs²**).

17. For the above said reasons, the other contentions of the defendant that the sale deeds of his vendor were not filed by the plaintiff or the gift deeds does not reflect delivery of the suit schedule properties fall insignificant. In this factual position, the plaintiff's entitlement for perpetual injunction against the defendant can safely be concluded and as the appellate Court fell in error in properly appreciating the evidence on record, the impugned judgment is liable to be and is accordingly set-aside. In effect, the decree and judgment passed by the trial Court is restored.

18. In the result, the second appeal is allowed. No costs.

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

//TRUE COPY//

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Principal District Judge, Nagarkurnool (with records, if any)

² AIR 2008 SUPREME COURT 2033

2. The Junior Civil Judge, at Kollapur
3. One CC to Sri N Bhujanga Rao, Advocate [OPUC]
4. One CC to Sri Jagan Mohan Reddy Kotha, Advocate [OPUC]
5. Two CD Copies

VA/gh

(Signature)



HIGH COURT

DATED:31/12/2024

JUDGMENT

SA.No.435 of 2024



ALLOWING THE APPEAL

⑦
12/02/25
bx