

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

-
S.A.NO.84 OF 1999

-
JUDGMENT

Heard both the counsel.

2. Aggrieved by the judgment and decree dated 17.7.1998 passed by the court of Senior Civil Judge, Siddipet in A.S.No.14/1993 in dismissing the appeal and thereby confirming the judgment and decree dated 2.3.1993 passed by the court of District Munsif at Siddipet in O.S.No.251/1986, in decree the suit for declaration of title and for consequential injunction, the contesting defendant no.2 in the original suit, filed the present second appeal.

3. The suit schedule property is an extent of 240 sq.yards in Sy.No.1839 situate at Bharatnagar locality, Siddipet town with following boundaries:

North: Medak road.

South: Open place of vendor (Jagadamba).

East: Open place of vendor (Jagadamba)

West: Houe and open place of Sri P.Bhoopathi Reddy.

4. The parties shall be referred to as per their array in the original suit, for the sake of convenience.

5. The case of the plaintiff, as per the plaint averments, is that one late Dr.Krishna rao, is the owner of an extent of 2,835 sq.yards, in Sy.No.1839, Siddipet town, having purchased from one Hajjam Buchaloo, on 28th Shaharwar 1354 Fasli. The said Krishna Rao, gifted the entire land of 2,835 sq.yards in favour of his wife Jagadamba, under a registered gift deed on 8th Isfandar 1356 Fasli and put her in possession of the same. Smt. Jagadamba, in turn sold the suit schedule property under a registered sale deed for consideration on 22-5-1985 to the plaintiff and put him in possession. Ever since the date of purchase, the plaintiff is in possession and enjoyment of the same. The plaintiff, with a view to construct a house and shopping complex in the schedule site, approached the municipal authorities, Siddipet and

obtained permission with the approved plan on 5.3.1986. The first defendant, who is having land on the eastern side of the suit schedule locality and the second defendant, who is the brother-in-law of the 1st defendant, without any manner of right, tried to dispossess the plaintiff from the suit schedule property and interfered with the possession of the plaintiff. The defendants 3 to 5 are the children of the second wife of late Krishna Rao and the defendant no.4 is the second wife. The 6th defendant is the close associate of defendants 1 to 5. All the defendants 1 to 6, thus in collusion, denying the title of the plaintiff and trying to interfere with the plaintiff's possession and enjoyment of suit land. In their attempts, the defendants on 30.4.1986, when the plaintiff is making attempts to construct shopping complex in the suit site and when the construction material was dumped by the plaintiff in the suit site, by parting with huge amount, caused obstruction and also threatened him with dire consequences. The defendants 1 and 2 are close associates and having influence and the plaintiff is not in a position to resist their illegal acts. Hence the suit.

6. Defendants 1 and 2 filed a common written statement denying the title of the plaintiff and possession over the suit schedule site. The defendants further submitted that gift deed alleged to have been executed in favour of Jagadamba by late Krishna Rao, is only for 1,625 sq. yards, but not for 2,835 sq. yards, as alleged in the plaint. In fact, the 2nd defendant, purchased 517 sq. yards from one Ramkrishna Reddy under an unregistered simple sale deed in the year 1356 Fasli, who also executed a registered sale-deed in favour of the second defendant on 11-7-1985 for a consideration of Rs.1,551/-. The said 517 sq. yards includes the suit site, which is on the eastern part of the entire 2,835 sq. yards. Ever since from the date of purchase i.e., 12th Amardad, 1356 Fasli, the 2nd defendant is in possession and enjoyment of the said 517 sq. yards. The plaintiff was never in possession and enjoyment of the suit site. In fact, the 2nd defendant dumped the construction material in his 517 sq. yards with a view to construct a boundary wall around 517 sq. yards, but not by the plaintiff as alleged in the plaint. The 2nd defendant also fixed boundary stones on its western side of 517 sq. yards, separating it from the land of Jagadamba, which is in the

remaining 1,625 sq.yards. The plaintiff's sale deed is a fictitious document and by virtue of the sale deed of plaintiff, no rights are conferred on him and further the kingpins behind the litigation are Jagadamba and her son Damodar, who also instituted a suit in O.S.No.56/1986 on the file of District Munsiff's Court, Siddipet, which is pending. The alleged interference to the possession of the plaintiff over the suit site is a myth and concocted for the purpose of filing this frivolous suit and the plaintiff has no cause of action. Hence, the suit was sought to be dismissed with costs.

7. Defendants 3 to 5 filed a written statement denying the gift deed executed in favour of the Jagadamba and also denying the registered sale deed executed in favour of the plaintiff by the said Jagadamba. Defendants 3 to 5 further submitted that the suit was got filed by Jagadamba and her children to grab the suit land under fictitious document. The suit schedule property is the ancestral property of late Krishna Rao and these defendants are also entitled to a share in the entire 2,835 sq. yards purchased by late Krishna Rao. The valuation given by the plaintiff is not correct and the court has no pecuniary jurisdiction to try the suit. Hence, the suit of the plaintiff was sought to be dismissed with costs.

8. On the above pleadings, the trial court framed the following issues for trial:

1. Whether the court has pecuniary jurisdiction to try the suit?
2. Whether the suit is properly valued and the court fees paid is proper and sufficient?
3. Whether the plaintiff is the exclusive owner and possessor of suit land?
4. Whether the plaintiff is entitled to the relief of declaration and permanent injunction?
5. To what relief?

9. In support of the case of the plaintiff P.Ws.1 to 3 were examined and Exs.A-1 to A-9 were got marked. On behalf of the defendants, D.Ws.1 to 4 were examined and Exs.B-1 to B-6 were got marked.

10. Appreciating the entire evidence, both oral and documentary, the trial court answering all the issues in favour of the plaintiff, decreed the suit.

11. Aggrieved by the same, defendants 1 and 2 filed first appeal in A.S.No.14 of 1993. By judgment and decree dated 17.7.1998, the lower appellate court confirmed the judgment and decree of the trial court and hence the present second appeal by the 2nd defendant in the original suit.

12. This court admitted the second appeal in view of the following substantial questions of law:

1. Whether the courts below are justified in decreeing the suit when the trial court held that Ex.A-9 gift deed is only for 1624 sq. yards and is tampered one and when the lower appellate court held that without there being original of Ex.A-9 before the court, giving a finding that Ex.A-9 is forged one, is unwarranted and when the burden is on the plaintiff to produce the original before the court and said burden is not discharged by the plaintiff?
2. Whether the lower appellate court is justified in holding that whether Ex.A-9 gift deed is in respect of 2835 sq. yards or 1624 sq. yards, the plaintiff's vendors family by virtue of gift or whatever it may be, is still in possession and enjoyment of suit sy.no. and other lands when it is the specific case of the appellate that late Krishna Rao, original owner of S.No.1839 sold 517 sq. yards in the said S.No. under Ex.B-4 in favour of one Ramakrishna Reddy, who in turn sold the same in favour of the appellate under Ex.B-3 and the suit land is part of the above said land?
3. Whether the courts below are justified in imputing knowledge to the appellate with the contents of the documents executed by one Indira in favour of Bhoopati Reddy, 1st defendant?
4. Whether the courts below are justified in holding that by the date of Ex.B-4, Krishna Rao himself had no right in the land gifted to Jagadamba under Ex.A-9, when the finding is that Ex.A-9 is only for 1624 sq. yards.
5. Whether the courts below are justified in holding that Exs.B-4 and B-5 have no legs to stand in the absence of Ex.B-1?
6. Whether the courts below are justified in relying on Exs.A-2 and A-8, when the appellant is not a party to those proceedings and not aware of the said proceedings?
7. Whether the lower appellate court is justified in holding that the appellant did not file any document to show his possession, when Exs.B-4, B-3 and B-5 would clearly show his possession and enjoyment of suit land and other land admeasuring 517 sq. yards?

13. The learned counsel for the appellant/defendant no.2 submitted that the plaintiff is alleged to have purchased the suit schedule property under Ex.A-1 sale deed dated 22.5.1985 from one Jagadamba, who got the

property from her husband under an alleged gift deed dated 8th Isfandar 1356 fasli, Ex.A-9, executed by her husband. He submitted that the defendants have disputed the gift deed alleged to have been executed by late Dr. Krishna Rao in favour of Jagadamba and that their case is that the gift is only for 1624 sq. yards and not for the entire land purchased by Krishna Rao from Hajjam Buchaloo. To prove that gift is only for 1624 sq. yards, they produced Ex.B-2 certified copy of the gift deed executed by late Krishna Rao in favour of Jagadamba and also examined the Sub-Registrar, Siddipet as D.W.3 and he, based on the Volume-I register maintained in the Sub-Registrar's Office, deposed that gift deed is only for 1,624 sq.yards. The plaintiff who is tracing title from gift deed, though it is seriously disputed, failed to produce the original gift, nor proved by the same by examining the attesting witnesses or if they are not alive, at least by seeking the court to send the document to a forensic science laboratory for opinion. The trial court has also categorically recorded finding of fact that Ex.A-9 gift deed is not proved and that it is tampered. When Ex.A-9 gift deed is not proved, the plaintiff cannot derive any title under Ex.A-9. He submitted that under Ex.B-5, certified copy of the caveat No.3/86 filed by Jagadamba in another suit, it is stated that late Krishna Rao, sold an extent of 400 sq.yards. When he sold 400 sq.yards, he cannot execute gift deed again for 2,835 sq. yards, when it is an admitted fact that late Krishna Rao, purchased only an extent of 2,835 sq.yards and this circumstance itself falsifies that the gift deed is for 2,835 sq. yards. He further submitted that the courts below relied on permissions granted by the municipal authorities and the proceedings in other suits, to hold that the plaintiff is in possession of the suit schedule property. He contended that the municipal permissions cannot be relied upon to prove the possession and the proceedings in other suits, to which the 2nd defendant is not a party, cannot be used against him. He submitted that though the trial court held that the gift deed is tampered, still decreed the suit, by wrongly placing burden on the contesting defendant and when it is settled proposition that it is for the plaintiffs to prove his case and cannot depend on the weaknesses of the defendants. He contended that the case of the defendant no.2 is that late Krishna Rao sold an extent of 517 sq. yards to Ramkrishna Rao under registered sale deed dated 6th Teer 1356 fasli and he, in turn sold the same to the defendant no.2 under Ex.B-3 sale deed dated 11.7.1985. He stated

that the defendant no.2 proved that that the gift is only for 1625 sq. yards by producing Ex.B-2 and also Exs.B-3 and B-4 by examining the Sub Registrar as D.W.3, and also the oral evidence of D.Ws.2 and 4, but the courts below failed to consider the evidence of record. He stated that on the ground that defendant no.2 failed to prove Ex.B-1, which is the unregistered sale deed dated 22nd Dai 1355 fasli, between Krishna Rao and Ramkrishna Rao, the other evidence cannot be eschewed. He submitted that the court below relied on the sale deed executed by one Indira in favour of the 1st defendant, wherein the 2nd defendant acted as attestor and in the said deed, the western side boundary is shown as the land belonging to Krishna Rao, and, therefore, the 2nd defendant has knowledge that the said land belongs to late Krishna Rao. He stated that mere attestation cannot be taken to hold that the attesting witness has full knowledge of the contents of the sale deed. He submitted that as the plaintiff failed to prove his title by proving the gift deed, he is not entitled to seeking for declaration. He contended that the both the courts below by perverse appreciation of the evidence on record, decreed the suit and the same is liable to be set aside.

14. On the other hand, the learned counsel for the respondent/plaintiff contended that it is admitted that the land belongs to late Krishna Rao, who executed a gift deed in favour of his wife Jagadamba and whether it is for 2,835 sq.yards or for 1,624 sq.yards, it is admitted that there is land belong to Jagadamba, and she sold an extent of 240 sq.yards to the plaintiff and the plaintiff proved the sale deed and further by producing the permissions granted by the local fund authorities and the oral evidence, has proved his possession and both the courts below concurrently held that the plaintiff proved his title and possession and these being findings fact, cannot be interfered with in the second appeal. He further contended that boundaries prevail over extents and in the present case, the boundaries in Ex.A-9 sale deed, tallied with gift deed Ex.B-2, produced by the defendants and hence even if there are any discrepancies with regard to extents, the same cannot be taken to disbelieve the case of the plaintiff and further though the defendant no.2 claimed that he purchased an extent of 517 sq. yards, under, Ex.B-3, since he failed to prove Ex.B-1 sale deed dated 22nd Dai 1355 Fasli,

he cannot claim title under Ex.B-3 and moreover both the courts below on appreciation of the entire evidence held that Ex.B-1 is a fabricated document. He contended that the questions of law raised by the appellant are all questions of fact, which the courts below concurrently held in favour of the respondents and the same cannot be interfered with in the second appeal. With these contentions, he sought to dismiss the second appeal.

15. The learned counsel for the appellant also raised the following additional substantial question of law:

“Whether the findings of courts below are perverse and contrary to the evidence on record.”

16. The learned counsel for the respondents objected for raising the additional substantial question of law, on which the learned counsel for the appellant placing reliance on proviso to Section 100 of C.P.C, submitted that if the court is satisfied that the case involves any other substantial question of law, which is not framed, it can by recording reasons and hearing the parties, can formulate such substantial question of law. The learned counsel for the appellant also relied on the judgment of the Apex Court reported in *DHARAM SINGH v. KARNAIL SINGH*^[1].

17. In view of the above rival contentions and the questions of law raised by the counsel for the appellant and the substantial questions of law framed for consideration at the time of admission of the appeal, I feel it appropriate to consider the second appeal on the following substantial question of law, which covers all the contentions raised by the counsel, and the substantial questions of law already framed above:

“Whether the findings of the courts below on the title and possession of the plaintiffs are based on evidence and not vitiated by perversity?”

18. Though the counsel for the respondents raised objection that no additional substantial question of law can be framed unless he is given an opportunity to make submissions, the said objection cannot be countenanced in view of the proviso to Section 100 C.P.C. and moreover both the counsel

have made elaborate arguments, taking this court through the entire evidence and the findings of both the courts below. Hence both the counsel were given sufficient audience to make submissions, even on the additional substantial question of law framed by this court. Further, this court in order to consider the entire gamut of the case, after giving sufficient opportunity to both the counsel, framed the above substantial question of law for comprehensive adjudication of the matter.

19. In order to consider the above substantial question of law, it is necessary to note the case of the respective parties and the evidence, both oral and documentary available on record.

20. It is well settled that the plaintiff who filed the suit for declaration of title and possession has to succeed on the strength of his own title and not on the weakness of the case of the defendants and that the defendants need not plead and prove the possible defects in plaintiff's title and that even if the defendants fail to establish their title, the plaintiff must be non-suited, if he fails to establish his title. A Division Bench of this court in **SAJANA GRANITES v. MANDUVA SRINIVASA RAO**^[2] held as under:

“10. The Supreme Court in *M.P. Athanstus* case (AIR 1954 SC 526), *M.M. Catholic v. Polo Avira* case (AIR 1959 SC 31) and this Court in *C. Audilakshamma* case (AIR 1973 AP 149) held that plaintiff in a suit for declaration of title, and for recovery of possession, can succeed only on the strength of his own title and that it is not obligatory on the defendants to plead and prove the possible defects in the plaintiff's title and so if the plaintiff fails to establish his title, even if the defendant fails to establish his own title plaintiff must be non-suited. In this case since appellants are seeking declaration of their title to the suit property they have to establish their title; and cannot expect relief on the basis of the weaknesses of the case of respondents 1 and 2, or on the basis that the evidence adduced by respondents 1 and 2 does not establish their title to the suit property.”

21. The case of the plaintiff is that one late Dr. Krishna Rao is the owner of an extent of 2,835 sq. yards in Sy.No.1839, Siddipet and he gifted the said entire extent to his wife Jagadamba under Ex.A-9 gift deed dated 8th Isfandar 1356 fasli and put her in possession and she sold an extent of 240

sq. yards, which is the suit schedule property to him on 22.5.1985 under Ex.A-1 sale deed and that he obtained permission under Ex.A-2 from the municipal authorities for construction and that the defendant no.1 who is having land on the eastern side of the suit land and that his brother-in-law, who is the 2nd defendant, without any manner of right are interfering with his possession and were denying title, and that in their attempts on 30.4.1986 when the plaintiff is making attempts to construct shopping complex and dumped material, obstructed the construction and hence, he filed the suit for declaration of title and possession.

22. The case of the contesting defendant no.2 is that late Krishna Rao, sold an extent of 517 sq. yards to Ramkrishna Reddy under Ex.B-4 registered sale deed on 6th teer 1356 fasli and put him in possession and he, in turn the sold land to this defendant under Ex.B-3 registered sale deed and that the said 517 sq. yards includes the suit schedule site, which is on the eastern part of entire 2835 sq. yards. The further case of the defendant no.2 is that the gift deed executed by late Krishna Rao in favour of his wife is only 1,624 sq. yards, and that Ex.B-2 is the certified copy of the gift deed and that Ex.A-9 produced by the plaintiff is a fictitious document and hence the suit was sought to be dismissed.

23. The other defendants 3 to 5, who are the children and second wife of late Krishna Rao filed written statement and denied the executed of gift deed and sought for dismissal of the suit.

24. Since the case of the plaintiff is that he purchased the suit schedule property under Ex.A-1 from Jagadamba and that his vendor Jagadamba got an extent of 2,835 sq.yards under a gift deed Ex.A-9 executed by her husband late Krishna Rao, the burden is on him to first prove Ex.A-9 gift deed, since the contesting defendant no.2 disputed the same and alleged that the gift deed is only for 1,625 sq. yards and in support of his case, produced Ex.B-2 certified copy of the gift deed.

25. The original of Ex.A-9 gift deed is not produced and the plaintiff did not take any steps to prove Ex.A-9. On the other hand, the defendants by examining the Sub Registrar, as D.W.3, proved that the gift is only for 1,624

sq. yards under Ex.B-2. The relevant portion of the findings of the trial court with regard to Ex.A-9 is as under:

“The other contention raised by the defendants counsel i.e., gift deed is only for 1624 sq. yards as per Ex.B-2, but not for 2,835 sq. yards as per Ex.A-9. To substantiate with the contention, the defendants also summoned the Sub-Registrar, along with volume I register and the same is substantiated by the defendants and hence, I hold that the extent mentioned in Ex.A-9 is not correct. There is every possibility of tampering in the original document by the party to claim rights in the suit site which is in a busy locality and the market price of the same is very high. The document i.e., the original of Ex.A-9 was not filed into court and the plaintiff did not choose to summon the original and no steps were taken to prove Ex.A-9 by the plaintiff.”

26. The trial court had categorically held that Ex.A-9 is tampered document. Though there is no appeal by the plaintiff, on this finding the appellate court finding of Ex.A-9 is unwarranted, since the original is produced. The burden is on the plaintiff to prove Ex.A-9 by producing original and when it is not produced, an adverse inference has to be drawn. Further, the above finding of the trial court shows that the plaintiff has approached the court with unclean hands and hence he cannot seek for any relief under the tampered document.

27. From a perusal of the impugned judgments, it could be seen that immediately after the finding that Ex.A-9 was tampered, the courts below shifted the burden on the contesting defendant no.2 to prove his claim. As already noticed, even if the defendant fails to prove his case, the plaintiff cannot succeed unless he proves his title and possession and he cannot rely on the weakness of the defendants.

28. In this case, the case of the defendant is that late Krishna Rao sold an extent of 517 sq. yards to one Ramkrishna Reddy under Ex.B-4 registered sale deed dated 6th Teer 1356 fasli and he, in turn sold the same to the defendant no.2, under registered sale deed dated 11.7.1985, Ex.B-3. During the course of evidence, the defendant no.2 has stated that late Krishna Rao initially sold the said extent of 517 sq. yards to Ramkrishna

Reddy under an unregistered sale deed dated 22nd Dai 1355 fasli under Ex.B-1. But he failed to prove Ex.B-1. However, by examining D.W.3, Sub Registrar, the 2nd defendant, proved Exs.B-3 and B-4, who deposed that they are co-relating to the entries in volume I register. It is well settled that there is presumption always in the favour of the official documents, which are prepared in due course of official business, unless the contrary is proved.

On the ground that the defendant no.2 failed to prove Ex.B-1, the courts below drew an adverse inference and failed to consider Exs.B-3 and B-4.

29. It is to be noticed that when there are registered sale deeds under Ex.B-3 and B-4, which are proved by examining the official witness D.W.3, the earlier unregistered sale deed under Ex.B-1 becomes insignificant and no adverse inference can be drawn for non-proving of the said document. Both the courts below on a perverse appreciation of evidence, failed to consider the evidence of official witness D.W.3, and also validity of Exs.B-3 and B-4. and the oral evidence of D.Ws.2 and 4.

32. Coming to the case of the plaintiff, when he failed to prove Ex.A-9, under which his vendor got the title and it is found that the said document is a tampered one, he cannot derive any title under Ex.A-1 sale deed. The courts below, to declare the title and possession of the plaintiff, relied on Ex.A-1 sale deed and the permission granted by the municipal authorities and the oral evidence of P.Ws.2 and 3 and proceedings under Exs.A-3 to A-7. To the suits under the said proceedings, the defendant no.2 is not a party and the municipal permission, without valid title, cannot be taken to declare possession and title and hence the appreciation of the courts below on the aspect of title and possession, is perverse, since the same is based on no evidence.

33. In fact, this subject matter is connected with the second appeal in S.A.No.39/1999, where the vendor of the plaintiff herein i.e., late Jagadamba filed the suit in O.S.No.56 of 1986 on the file of District Munsif at Siddipet for declaration of title and for perpetual injunction in respect of an extent of 626 sq. yards in Sy.No.1839 of Siddipet town and revenue mandal, Medak District with specific boundaries mentioned in the schedule. The contesting defendant in both the suits is one and the same and his stand is also

common and his claim is to an extent of 517 sq. yards, which includes the present suit schedule property. This court in the connected second appeal in S.A.No.39/1999, has categorically held that the plaintiffs therein failed to prove gift deed and also the possession over the suit schedule property and in spite of the same, the findings of the courts below in decreeing the suit, are based on no evidence and are vitiated by perversity and the substantial question of law framed is answered in favour of the contesting defendant and accordingly the judgment and decrees of both the courts below were set aside and the suit in O.S.No.56 of 1986 is dismissed.

34. Therefore, when the vendor of the plaintiff could not prove her title over the suit schedule property in the connected second appeal in S.A.No.39/1999, the plaintiff cannot derive any title and the present second appeal also deserves to be allowed *mutatis mutandis* by answering the substantial question of laws in favour of the appellant.

35. In the result, the second appeal is allowed and consequently, the judgments and decrees of both the courts below are set aside. No costs.

AVS
--

2011

08—06—

[\[1\]](#) (2008)9 SCC 759
[\[2\]](#) 2002(1) ALT 466 (D.B.)