
(2013) 12 AP CK 0173
In the Andhra Pradesh High Court
Case No : L.P.A. No. 95 of 2002

Arimanda Vijaya Bhaskara Reddy

APPELLANT

Vs

Manukonda Rami Reddy (died) Per LRs

RESPONDENT

Date of Decision : 30-12-2013

Acts Referred:

Citation : (2014) 5 ALD 374 : (2014) 4 ALT 718

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This Letters Patent Appeal is filed assailing the judgment rendered and decree passed on 26-09-2001 by a learned single Judge of this Court in A.S.No. 2649 of 1985. That appeal, in turn, arose out of the judgment and decree dated 30-04-1982, in O.S.No. 145 of 1979 on the file of the Subordinate Judge, Tenali. The 2nd defendant in the suit is the appellant herein. For the sake of convenience, the parties are referred to, as arrayed in the suit.

2. The plaintiff, who is since dead, and is represented by the legal representatives; filed the suit for the relief of specific performance of an agreement of sale dated 06-05-1976 (Ex.A-1). Initially, it was filed against the 1st defendant (2nd respondent). During the pendency of the suit, the 2nd defendant, the minor son of the 1st defendant, got impleaded as defendant No. 2.

3. The plaintiff pleaded that the suit schedule property, a house, with open land around, was purchased by the 1st defendant in the year 1971, for consideration of Rs. 18,000/-, and that five years thereafter, the 1st defendant offered to sell the property for Rs. 75,000/-. The plaintiff is said to have accepted the offer, and Ex.A-1 was entered into. On the same day, a sum of Rs. 65,000/- is stated to have been paid. He pleaded that though he offered to pay the balance of consideration and requested for execution of the sale deed and delivery of possession, the 1st defendant failed to comply with the request, on one pretext or the other. The plaintiff got issued a notice on 09-04-1979, and thereafter, filed the suit. He pleaded that he has always been ready and willing to perform his part of the contract.

4. The 1st defendant filed a written-statement, stating that the son of the plaintiff was in the cinema business, and thereafter, he, i.e. the 1st defendant, also joined as a partner, and in connection with the production of a film, he borrowed a sum of Rs. 40,000/- from the plaintiff. It was his case that he never intended to sell the property, and Ex.A-1 was taken from him by representing that an equitable mortgage is being created. According to him, the document, Ex.A-1, was concocted as an agreement of sale. It was stated that, he received only a sum of Rs. 40,000/- and not Rs. 65,000/-, as pleaded by the plaintiff. He prayed for dismissal of the suit.

5. The 2nd defendant filed a written-statement, through his mother. It was pleaded that the suit schedule property is owned by the joint family and the 1st defendant has no right to enter into an agreement, for sale of the property. It was also stated that the 1st defendant was addicted to vices, and the activity of production of films was not for the benefit of the family, and that any transaction undertaken by him is not binding upon the family.

6. The plaintiff filed a rejoinder, dealing with the contentions raised by the defendants. He stated that the suit schedule property was purchased by the 1st defendant with his own funds and that it is a self-acquired property. Alternatively, he pleaded that the sale of the property was for the family necessity and it is binding upon all the members of the joint family.

7. The trial Court decreed the suit, through the judgment dated 30-04-1982. Aggrieved by that, the 2nd defendant alone filed A.S.No. 2649 of 1985, before this Court. A learned single Judge of this Court held inter alia that since the 1st defendant failed to file appeal, the decree passed by the trial Court, as against him became final, and thereby, the appeal filed by the 2nd defendant became untenable by operation of res judicata. Observations were also made on merits, and ultimately the appeal was dismissed.

8. Sri K. Suresh Reddy, learned counsel for the appellant submits that the view taken by the learned single Judge that the appeal filed by the 2nd defendant became untenable; cannot be supported in law. He submits that the principle of res judicata, in the context of appeals gets attracted only when a Court has disposed of several matters through a common judgment and the aggrieved party prefers appeals in relation to some of them, and not all the matters. Learned counsel submits that the failure on the part of one of the aggrieved parties to prefer an appeal can never be treated as a ground for rejecting the appeal, preferred by the others.

9. On merits, learned counsel submits that the suit schedule property, no doubt, was purchased by the 1st defendant, but it was through the funds generated through the joint family property. He contends that the attempt of the 1st defendant to sell the property was only to meet his unethical and unlawful expenditure and any transaction undertaken by him would not bind the other members of the joint family. Learned counsel submits that the trial Court and the

learned single Judge of this Court erred in taking the view that the transaction under Ex.A-1 is a genuine and legal one.

10. Sri K. Panduranga Rao, learned counsel for the plaintiff, on the other hand, submits that the agreement of sale, Ex.A-1 was proved beyond any doubt, in view of the fact that the 1st defendant did not dispute the signature thereon. He contends that the defence sought to be taken by the 1st defendant that he executed only a deed of mortgage and not an agreement of sale, was not at all substantiated. Learned counsel submits that the plea of the 2nd defendant that the suit schedule property is owned by the joint family, and that the 1st defendant was addicted to vices was found to be untenable, and the 2nd defendant is not able to demonstrate as to how the transaction is vitiated. He further submits that the concurrent findings recorded in the suit and appeal do not warrant interference.

11. The trial Court framed only one issue, viz., "whether the suit contract of sale dated 06-05-1976 is true and valid and supported by consideration". Thereafter, an additional issue was framed viz., whether the suit contract, dated 06-05-1976 is binding on the 2nd defendant.

12. On behalf of the plaintiff, PWs 1 to 3 were examined and Exs.A-1 to A-5 were filed. On behalf of the defendants DWs 1 to 3 were examined and Exs.B-1 to B-6 were filed. On suit being decreed, an appeal was filed. A learned single Judge of this Court framed only one point, viz., "whether Ex.A-1 is an agreement of sale or a deed of mortgage, and whether the suit property is the joint property of defendants 1 and 2, or the self acquired property of defendant No. 1". The appeal was dismissed.

13. In view of the extensive arguments advanced by the learned counsel for the parties, the following points arise for consideration:

1) Whether the failure on the part of the 1st defendant to prefer appeal against the decree in O.S.No. 145 of 1979 would have any adverse impact upon the appeal, preferred by the 2nd defendant?

2) Whether the plaintiff has proved the execution of Ex.A-1? and

3) Whether the 2nd defendant was able to prove that the suit schedule property is owned by the joint family, and Ex.A-1 executed by defendant No. 1 is not for the necessity of the family?

Point No. 1.

14. The necessity to frame the first point has arisen on account of the fact that most of the discussion undertaken by the learned single Judge of this Court, while disposing of the appeal, was, in relation to the failure on the part of the 1st defendant to prefer an appeal and effect thereof on the appeal preferred by the 2nd defendant. The relevant portion of the judgment reads:

...Before going into these questions, a startling fact to be taken note of is that

admittedly defendant No. 2 is the son of defendant No. 1 and decree was passed against both the defendants. However, no appeal was preferred by defendant No. 1 against the said decree. Therefore, on all aspects and on all issues the judgment of the Court below has become final, conclusive and binding as against defendant No. 1. Defendant No. 2 is no other than the son of defendant No. 1. He cannot challenge the validity of the finding as against defendant No. 1, his father. If defendant No. 2 is permitted to challenge the decree, it would amount to challenging the finding as against defendant No. 1. In this situation, there is a bar against defendant No. 1 - appellant to challenge the judgment and decree of the lower Court....

15. With due respect to the learned single Judge of this Court, the view expressed in the above paragraph cannot be said to be representing the correct position of law. It is not uncommon that the suit is filed by several plaintiffs and defendants are also many. The result in a suit may emerge uniformly in favour, or against all the plaintiffs, or all the defendants. There may also be instances, where the result of the suit may adversely effect the interests of only some of the defendants, or the plaintiffs, as the case may be.

16. Even where, the defendants or the plaintiffs, as the case may be, get a judgment adverse to all of them, it is not necessary that, all the adversely effected persons must join as appellants. Much would depend upon the inclination on the part of the aggrieved party. While some may choose to accept the result, though adverse to them, others may feel like pursuing the matters further. The mere failure on the part of one of the aggrieved parties, to join another, in filing the appeal, or to file separate appeal, does not at all effect the appeal preferred against a decree by another. Obviously, the learned single Judge had in mind, the principle that operates, where the trial Court disposes of several proceedings through a common judgment, and the aggrieved party files appeal only against one, or few of them, and not all.

17. Precedents are galore, wherein it was held that, if a party suffers several decrees, passed through the common judgment, must prefer appeal against all the decrees, and his failure to file appeal against one such decree would attract the principle, underlying Section 11 C.P.C. There again, the failure on the part of another party to prefer appeal against one or many decrees would not effect the appeal or appeals, preferred by a different party. For instance, if through a common judgment, four suits have been disposed of, and one of the parties is aggrieved by only one decree, it is not necessary that he must prefer appeals against rest of the three decrees. Similarly, if a person, who is aggrieved by the other decrees, passed through the same judgment, fails to file appeals against all, or one of them, the impact of operation of res judicata must be felt by such party, and not the one, who has taken steps, that were expected from him. Therefore, this point is answered in favour of the 2nd defendant.

Point No. 2.

18. Point No. 2 is in relation to proof of Ex.A-1.

19. Apart from deposing as PW-1, the plaintiff has examined the PWs 2 and 3. PW-2 is the scribe of Ex.A-1, and PW-3 is one of the witnesses to Ex.A-1. Both of them stated that the 1st defendant, i.e. DW-1, has signed upon the document after receiving the consideration. Nothing was elicited from either of the witnesses. The trial Court found that DW-1 is a literate person, and he signed the document only after going through the contents thereof. Therefore, the plea of the 1st defendant that he signed the document under the impression that it is a deed of mortgage; cannot be accepted.

Point No. 3.

20. The third point concerns the plea raised by the 2nd defendant. According to him, the suit schedule property is owned by joint family and that the sale was not for the benefit of the family. Hardly any evidence was adduced in this behalf. On the other hand, the plaintiff filed Ex.A-4, a sale deed, through which, the 1st defendant purchased the suit schedule property in his name. Ex.A-4 is equivalent to Ex.B-2. There is no evidence to establish that the suit schedule property was purchased through the income derived from the joint family properties. The defendants did not prove that there existed joint family property, which was sufficient to generate the funds for purchase of the suit property. The record, on the other hand, discloses that the 1st defendant was in the cine field, and he has independent source of income, which has nothing to do with the joint family.

21. The second aspect is, as to whether the sale was for the benefit of the family. In this regard, it needs to be observed that the sale, through Ex.A-1 is not the only transaction. Earlier, even the property, that was allotted to the share of the 1st defendant, was sold or exchanged, and the 2nd defendant, or his mother did not raise any objection, at any point of time. Though a plea was raised that the 1st defendant was addicted to vices, nothing was proved in that behalf. Further, the undertaking of business in cine field cannot be said to be a vice. If the joint family was willing to enjoy property acquired by the 1st defendant, through his own activities, it should be equally be prepared to accept the sales, that are effected by the 1st defendant, that too, of the properties acquired by him, and not those, which have fallen to his share, in the family partition.

22. There are no merits in the appeal. It is accordingly dismissed.

23. The miscellaneous petition filed in the appeal shall also stand disposed of. There shall be no order as to costs.