(2005) 07 AP CK 0091

In the Andhra Pradesh High Court

Case No : SA No. 279 of 2005

Chintha Seethapathi Rao (died by LRs.) and Others — APPELLANT

Vs

Chintha Suryanarayana — RESPONDENT

Date of Decision : 22-07-2005

Acts Referred:

Citation : (2005) 6 ALD 30

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.V. Durga Prasad and A. Jayanthi, for the Appellant; M.V. Srinivasa Varadhachari, for B. Rajendra, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This second appeal is filed by the legal representatives of the sole plaintiff in O.S. No. 81 of 1995 on the file of the learned Junior Civil Judge''s Court, Siddipet. For the sake of convenience, the parties are referred to, as arrayed in the suit. The suit was filed for the relief of declaration of title and for perpetual injunction in respect of the suit schedule property against the defendant. Declaratory relief was also claimed, in relation to the proceedings of the Mandal Revenue Officer, validating the sale in respect of the suit schedule property in favour of the respondent.

2. The plaintiff and the defendant are the brothers. It was pleaded that plaintiff entered into an agreement of sale in respect of the suit schedule property admeasuring 22 guntas with one R. Balaiah on 19-12-1980 (marked as Ex.A-6) and that ever since then, he was in possession and enjoyment of the property. After the death of R. Balaiah, his sons, who were examined as PWs. 2 and 3, are stated to have executed the sale deed, dated 7-5-1992 (marked as Ex.A-1), in favour of the plaintiff. He pleaded that on account of his employment, he was at various places and in that view of the matter, he entrusted the management of the property to his younger brother, the defendant, and that taking advantage of the same, the latter got false entries in certain revenue records and in fact

obtained an order of validation of sale on 29-1-1994, Ex.B-7.

3. Defendant filed a written statement and pleaded that he entered into an agreement of sale in the year 1989 with PWs.2 and 3 and thereafter the sale was validated in his favour through Ex.B-7. He contended that plaintiff was never in possession of the property and that the reliefs claimed cannot be granted.

4. Through its judgment dated 30-6-1999, the trial Court decreed the suit. Aggrieved thereby, defendant filed A.S. No. 21 of 1999 in the Court of Senior Civil Judge, Siddipet. The lower appellate Court reversed the judgment and decree of the trial Court through its judgment dated 6-12-2000. Hence, this second appeal.

5. Smt. A. Jayanthi, learned Counsel for the appellants, submits that plaintiff proved his title through Ex.A-1 by examining the executant, the witness and scribe thereof and that the trial Court had rightly decreed the suit. She contends that the possession of the plaintiff over the suit schedule property is evidenced by the pahanies for the contemporary period, marked as Exs.A-2, A-3 and A-4 and that there was no justification for the lower appellate Court in reversing the findings of the trial Court in this regard. She further contends that once Ex.A-1 had evidenced the transfer of the suit schedule property in favour of the plaintiff, there was no basis for the Mandal Revenue Officer in passing the orders in Ex.B-7.

6. Sri Srinivasa Varada Chary, learned Counsel for the respondent, on the other hand, submits that though Ex.A-1 was placed before the trial Court, it was not established that it was executed for any consideration or that possession was delivered under it. He further pleads that once the sale in favour of the respondent is validated through Ex.B-7, a statutory presumption deserves to be drawn in its favour and that the lower appellate Court had corrected the mistake committed by the trial Court.

7. The dispute in the second appeal is in relation to an extent of 22 guntas of land. The plaintiff had placed before the trial Court Ex.A-6, agreement of sale dated 19-12-1980, and Ex.A-1, the sale deed dated 7-5-1992, in relation to the property. To prove Ex.A-1, he examined PWs.2 and 3, the executants of the document, PW. 4, the attestor of Ex.A-6 and PW.5 the attestor of Ex.A-1.

8. Nothing was elicited through these witnesses to doubt the execution of Exs.A-6 and A-l. Therefore, it can safely be concluded that plaintiff proved those documents.

9. The declaratory relief claimed by the plaintiff as regards his title to the suit schedule property and as to the validity of Ex.B-7 are inter related. The A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short ''the Act'') confers power on the Mandal Revenue Officer to validate the sales, if they were not in accordance with the provisions of the Transfer of Property Act. A detailed procedure is prescribed for this purpose. Defendant made an application to the

Mandal Revenue Officer for validating the sale in his favour on the strength of the agreement of sale said to have been executed by PWs.2 and 3 in his favour in 1989.

10. Though no notice, as such, was issued to the plaintiff, he filed his objections before the Mandal Revenue Officer on coming to know about the steps. He specifically pleaded that he acquired title to the land through Ex.A-1, from the same vendors. Despite the same, the Mandal Revenue Officer issued Ex.B-7, validating the sale in favour of the defendant. On the face of it, Ex.B-7 cannot be sustained in law. Validation can take place only when the transaction is not evidenced by any valid sale deed. Once Ex.A-1 was shown to be existing in relation to the same land, executed by the same vendors, the Mandal Revenue Officer did not have the jurisdiction to validate another sale. Such a course, virtually amounts to annulling valid sale deed executed in accordance with law. That was never be the purport of the provisions of the Act.

11. As regards the relief of perpetual injunction, plaintiff pleaded that except entrusting the management of the property for sometime to the defendant, he remained in possession throughout. In this regard, the material throwing light upon the state of affairs obtaining as on the date of filing of the suit assumes importance. Plaintiff filed Exs.A-2 to A-4, pahanies for three consecutive years, preceding the filing of the suit. They clearly disclose that the plaintiff was in possession of the suit schedule property. In contradiction to this, the defendant filed certain land revenue receipts marked as Exs.B-1 to B-6. the certificate of validation issued by the Mandal Revenue Officer marked as Ex.B-7, and pattadar passbook. Once the possession is reflected through Exs.A-2 to A-4 and no material contradicting the same is placed by the respondent, the only inference to be drawn was that the plaintiff was in possession of the suit schedule property. The trial Court recorded this finding after discussing the evidence on record. The lower appellate Court has drawn certain presumptions and surmises and reversed the finding.

12. For the foregoing reasons, the second appeal is allowed setting aside the judgment and decree of the lower appellate Court in A.S. No. 21 of 1992, dated 6-12-2000. As a result, the decree, dated 30-6-1999, granted by the trial Court shall revive. No costs.

