
(2011) 12 AP CK 0054

In the Andhra Pradesh High Court

Case No : Second Appeal No's. 6 and 70 of 2005

Dastagir Ahmed

APPELLANT

Vs

Smt. Khairunnisa Rahana and Others

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2012) 3 ALD 13

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : T.S. Anand, for the Appellant; V.L.N.G.K. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy

1. These two Second Appeals arise out of a common judgment rendered by the Court of the Principal Junior Civil Judge, Karimnagar in O.S.Nos.1466 of 1993 and 1473 of 1993. The plaintiff and 1st defendant in O.S.No. 1466 of 1993 figured as the sole defendant and plaintiff, respectively, in O.S.No. 1473 of 1993.

2. For the sake of convenience, the parties are referred to as arrayed in O.S.No. 1466 of 1993.

3. That suit was filed initially for the relief of declaration of title and injunction in respect of Acs.1-11 guntas of land in Survey No. 749 of Bommakal Village of Karimnagar Mandal and District. The plaintiff pleaded that Acs.4.32 guntas of land in Survey No. 749 was owned by one Abdul Razak, who had two sons, by name, Abdul Sattar and Ahmedulla Quadri and a daughter, by name, Huzurunnisa Begum, the 8th defendant. Defendant No. 4, by name, Theetla Sailu, is said to have purchased Ac.1.20 guntas of land from Abdul Sattar in the year 1970 under an unregistered sale deed, for a consideration of Rs.850/- and that his name was recorded as cultivator and possessor. On the same day, the brother of the 4th defendant i.e. the 5th defendant, is said to have purchased an extent of Ac.0.20

guntas on the Northern side thereof. He pleaded that out of Acs.1.20 guntas held by the 4th defendant, Ac.0.09 guntas was acquired by the Government for widening of the road and the left over Acs.1.11 guntas was purchased by him from the defendant No. 4 on 08-02-1983 (Ex.A-1) and that the legal heirs of Syed Ahmadullah Quadri i.e. defendant Nos.6 and 7 have joined the execution of sale deed. He further pleaded that Defendant No. 8, daughter of Abdul Razak, has also executed a deed of ratification on 01-09-1993 (Ex.A-2). His grievance was that the defendants and in particular the defendants 1 and 8 are interfering with his possession and enjoyment of the suit schedule property. Later on the relief of recovery of possession was claimed, by amending the plaint.

4. The principal contest to the suit was by defendants 1 and 9. They pleaded that out of Acs.4.32 guntas of land in survey No. 749, Abdul Razak sold Acs.1.20 guntas on the Southern side way back in the year 1956 in favour of one B. Narasimlu and that the latter in turn, sold that to 9th defendant, in the year 1966 (Ex.B-17). It was also stated that the 6th defendant and Abdul Sattar executed an unregistered document on 05-08-1985 (Ex.B-16) in favour of the 5th defendant in respect of the said land almost in the form of disclaimer. An extent of Ac.0.16 guntas of land was acquired by the Government from this land for widening of the road and that the 9th defendant executed a sale deed, dated 08-11-1993 (Ex.B-1) in favour of the 1st defendant, transferring Acs.1.04 guntas on the Southern side of Survey No. 749.

5. It was pleaded that the suit was filed almost in a speculative measure and that there is a substantial variance in the boundaries mentioned in Ex.A-1 on the one hand and the suit schedule property on the other. The other defendants are also filed written statements presenting their own versions and disputing the claim of the plaintiff.

6. The 1st defendant filed O.S. No. 1473 of 1993 for the relief of perpetual injunction in respect of Acs.1.04 guntas of land in survey No. 749 of Bommakal Village, Karimnagar Mandal, against the plaintiff.

7. Through a common judgment, dated 19-03-2001, the trial Court decreed O.S. No. 1473 of 1993. O.S. No. 1466 of 1993 was also decreed, but with a rider that it shall be in respect of Acs.1.02 guntas of land on north of the suit schedule property in O.S. No. 1473 of 1993, as detailed in the sketch in O.S.No. 208 of 1994.

8. The plaintiff filed A.S. Nos.16 of 2001 and 17 of 2001 against the decrees in O.S.Nos.1466 of 1993 and 1473 of 1993, respectively, in the Court of the IV Additional District Judge (Fast Track Court), Karimnagar. Through separate judgments, dated 14-09-2004, the lower appellate Court dismissed the appeals. S.A. No. 6 of 2005 is directed against A.S. No. 16 of 2001 and S.A.No. 70 of 2005 is filed against A.S. No. 17 of 2001.

9. Sri T.S. Anand, learned counsel for the plaintiff submits that the title in respect of the suit schedule property was proved by his client by filing the sale deed

Ex.A-1 and the link documents. He submits that the trial Court and the lower appellate Court have given undue importance to certain minor discrepancies and denied the relief. Learned counsel further submits that the fact that the 4th defendant enjoyed absolute rights over the property, is borne out by record and Ex.A-1 was executed not only by the 4th defendant, but also the legal representatives of the original owner. He contends that the Courts below have taken into consideration, Ex.C-14, a rough sketch, prepared by the defendants though it has no evidentiary value. Learned counsel further submits that the 9th defendant did not own any property in survey No. 749 and Ex.B-1 sale deed executed by him in favour of the 1st defendant is of no consequence.

10. Sri V.L.N.G.K.Murthy, the learned counsel for the 1st defendant, on the other hand, submits that the plaintiff was not consistent in his stand in various proceedings initiated by him. He contends that on the one hand, he filed O.S.No. 208 of 1994 against some of the defendants for the relief of specific performance of an agreement of sale in respect of Ac.1.04 guntas and on the other hand, filed O.S. No. 1466 of 1993 for declaration of title and recovery of possession, by changing the description of the property. Learned counsel submits that when the sole basis for the plaintiff and his brother was an agreement of sale and they filed O.S. No. 208 of 1994 for specific performance in respect of Ac.1.04 guntas of land in survey No. 749, it is just ununderstandable as to how a suit for declaration of title and recovery of possession, in respect of the same property can be filed, after O.S.No. 208 of 1994 was withdrawn. Other contentions also have been advanced.

11. It has already been mentioned that O.S.No. 1466 of 1993 filed by the plaintiff and 1473 of 1993 filed by the 1st defendant were clubbed and common evidence was recorded. In the suit for declaration of title and recovery of possession, the following issues were framed:

- 1) Whether the plaintiff is the owner and possessor of the suit schedule property as on the date of filing of the suit?
- 2) Whether the defendant interfered with the peaceful possession of the plaintiff over the suit schedule property and if so, the plaintiff is entitled for perpetual injunction against the defendants?

After the amendment of the plaint, the following issues were added:

- 1) Whether the plaintiff is entitled for declaration of ownership?
- 2) Whether the plaintiff is entitled for recovery of possession of the suit schedule property?,
- 3) Whether the Court fee paid is insufficient and improper?

In the suit for perpetual injunction, filed by the 1st defendant, the following issues were framed:

- 1) Whether the plaintiff is the owner and possessor of the land measuring

Ac.1.04 guntas in Sy.No. 749 situated at Bommakal village?

2) Whether the plaintiff is entitled to seek relief of perpetual injunction against the defendant restraining him from interfering with the lawful possession of the suit land?

12. Marathon trial was conducted. On behalf of the plaintiff, PWs.1 to 7 were examined and Exs.A-1 to A-44 were filed. On behalf of the defendants, DWs.1 to 5 were examined and Exs.B-1 to B-27 were filed. In addition to that, Exs.C-1 to C-14, which are the documents pertaining to O.S.No. 208 of 1994, were taken on record.

13. The trial Court decreed both the suits, but with a rider in O.S.No. 1466 of 1993. Not satisfied with the result in the suit, the plaintiff filed two appeals. In both the appeals, the appellate Court framed the following points for its consideration:

- a. Whether the Appellant/Defendant placed sufficient evidence in support of his claim?
- b. Whether the trial Court considered the evidence properly and arrived at correct conclusion?
- c. Whether the Judgment and Decree passed by the trial Court are tenable?
- d. Whether the Appellant/Defendant is entitled to the reliefs prayed for?

and the appeals were dismissed.

14. The dispute is in relation to a part of the land in survey No. 749 of Bommakal village. It is the common case of the parties that the total extent of that land is Ac.4.32 guntas. The plaintiff claims to have purchased Ac.1.11 guntas of land from the defendants 4, 6 and 7 through Ex.A-1 and that the 8th defendant had ratified the same. In his written statement, the 4th defendant stated that he was the owner and possessor of Ac.1.20 guntas of land and that his brother the 5th defendant owns Ac.0.20 guntas of land on his northern side in the same survey number. He stated that his father purchased Ac.1.20 guntas of land from the defendants 6 and 7 in survey No. 749 and in the oral partition, each one of the three brothers got Ac.0.20 guntas, he acquired the share of his brother Theetla Narasaiah through exchange and that another Ac.0.20 guntas of land in the same survey number on the southern side was purchased by him from one Javvaji Narayana. According to him, Acs.0.20 gutnas of land of his brother 5th defendant is on the northern side and his land of an extent of Ac.1.20 guntas is on the southern side. He stated that he executed Ex.A-1, along with the defendants 6 and 7; in favour of the plaintiff. He further stated that one B. Narasimlu purchased Ac.1.20 guntis in survey No. 786 from the 6th defendant in 1956 and that the said land of Acs.1.20 guntas was on the southern side of his land. It is a different matter that the defendants 6 and 7 in their written statement denied sale in favour of Narasimhulu.

15. Once the vendor of the plaintiff admitted that the vendor the 9th defendant owned Acs.1.20 guntas of land in survey No. 749 on the southern side, it emerges that the land held by the 4th defendant is the one between the land owned by Narasimlu on the southern side and the land owned by the 5th respondent on the Northern side. These three bits account for Acs.3.20 guntas. The left over land in survey No. 749 would be Ac.1.12 guntas. However, Abdul Sattar, one of the sons of Adbul Razak, is said to have sold Acs.2.17 gunats of land in survey No. 749 in favour of one Edla Anjaiah (PW-4) through Ex.A-32 on the Northern most side. That, in turn, appears to have resulted in the plaintiff being pushed down towards north.

16. The plaintiff, the defendants 4, 6 and 7 have acknowledged that the land owned by the 9th defendant is on the Southern side of the suit schedule property covered by Ex.A-1. The 9th defendant, in turn, acquired that property from B.Narasimlu and it is part of survey No. 749. In Ex.A-1, the boundaries are furnished as under:

East: Agricultural dry of land of Vemula Komuraiah

West: Road

North: Agricultural land of Teetla Ilaiah

South: Agricultural dry land of Boodireddy Rajmallu (D-9).

17. In the plaint also the same description is given. However, it is pertinent to mention that the plaintiff herein. along with his brother byname, Syed Nazir Ahmed, filed O.S.No. 208 of 1994 in the Court of the District Munsif, Karimnagar, for the relief of specific performance of an agreement of sale against defendants Nos.1 and 8 herein. That was in relation to Acs.1.04 guntas of land with the boundaries of:

East: Agricultural land of Makala Rajaiah and Singaravene Odelu

West: Proposed road.

North: Acs.1.11 guntas of land of Huzurunnisa Begum (D-8)

South: Land of Rakam Mallaiah.

18. It was pleaded that an agreement of sale was executed by the 8th defendant herein on 02-08-1993 for a consideration of Rs.20,000/- and a sum of Rs.15,000/- was already paid as advance. That suit was filed when O.S.No. 1473 of 1993 was pending adjudication. However, O.S. No. 208 of 1994 was withdrawn at a subsequent stage. The plaintiff came forward with the plea that his brother got filed O.S. No. 208 of 1994 without his knowledge and on coming to know about that, he initiated steps for withdrawal of the suit. However, he was confronted with the signatures on Vakalat, Plaint, verification column etc., of O.S. No. 208 of 1994 and he admitted that all of them to be true. They are marked as Exs.C-4 to C-13. The plaintiff admitted that the boundaries mentioned in the

plaint and sale deed are not correct. A specific question was put to him in the cross-examination as under:

Whether the boundaries mentioned in the pliant and the sale deed are correct in the suit survey number?

His answer was:

In my registered sale deed there is some wrong boundary mentioned on the Southern side in respect of survey No. 748. The name of Boodireddy Rajamallu (D-9) land is mentioned. I came to know about the mistake after filing of the written statement by the defendant. I do not get any rectification deed from my vendor.

19. In another sentence he stated:

I have no knowledge of Biidureddy Rajamallu (D-9) has any land on my southern side ornot.

He further stated that Rajamallu has no land. Thereafter his deposition proceeded where he stated:

the survey No. 748 on the southern side of my land belongs to Singareddi Odelu. There is no land of Raka Mallaiah on the southern side of the suit land.

The witness again said:

the land of Raka Mallaih is on the southern side of my land.

20. There is clinching evidence in the suit for resolving the dispute about the location of the suit schedule property. The Government acquired part of survey No. 749 for expansion of a Highway. An extent of Ac.0.16 gutnas out of Ac1.20 guntas held by D-9 and an extent of Ac.0.09 guntas of land held by D-4 was acquired. In the award proceedings, the names of D-4 and D-9 were mentioned in respect of survey No. 749. Not satisfied with the compensation paid by the Land Acquisition Officer, both of them sought for reference u/s 18 of the Land Acquisition Act. The reference was taken up in O.P. No. 94 of 1991 by the Court of the Subordinate Judge, Karimangar. While D-9 herein figured as claimant No. 43, D-4 figured as Claimant No. 44. On 08-02-1993, the day on which D-4 executed Ex.A-1 in favour of the plaintiff, he filed claim statement before the Court. D-9 also filed a claim statement. Those two statements are marked as Exs.B-13 and B-14. In the form of reference, marked Ex.P-15, the particulars of the acquired land were mentioned.

21. The plaintiff feigned ignorance of the acquisition proceedings. He denied the suggestion that an extent of Ac.0.16 guntas of land was acquired from the land held by D-9.

22. It hardly needs any mention that the relief of declaration of title and recovery of possession needs a strong foundation. The plaintiff in such a suit must not only prove his case as required under law, but also establish his bona fides. Any

factors that create doubt, or the inconsistency in the case if the plaintiff would reflect upon the truthfulness of the plea and would enable the Court to reject the relief. In the instant case, the plaintiff was not sure as to that the land that was purchased by him. On the one hand, he filed the suit for declaration of title in respect of Ac.1.11 gutnas in survey No. 749 and even while that suit was pending, he filed another suit for specific performance in respect Acs.1.04 guntas in the same survey number against defendants 1 and 8. He was virtually at a loss to understand as to what he was doing. It ultimately emerged that he was claiming diagonally opposite reliefs in respect of the same property. He did not hesitate to disown the steps taken by him, when they were found to be inconsistent.

23. The evidence on record clearly discloses that D-9 owned and possessed Acs.1.20 guntas of land on southern side of survey No. 749, and out of it, Ac.0.16 guntas of land out of it was acquired by the Government. He sold the remaining extent of Acs.1.04 guntas through Ex.B-1 to D-1. The property held by D-4 was on the northern side of the one, conveyed through Ex.B-1. The easiest way for identification of the suit schedule property was to start the measurement from the southern boundary of the land of Ac.0.20 guntas held by D-5, which was not subjected to any acquisition at all. However, it is his anxiety to lay claim over the land purchased by D-1, the plaintiff has gone to the extent of disputing the boundaries mentioned in Ex.A-1 and the plaint. Once he admitted that the boundaries are not correct, it is just impermissible for him to lay a claim for the suit schedule property, without seeking the relief of rectification of the boundaries.

24. The Trial Court and the lower appellate Court have undertaken extensive discussion and have arrived at just and proper conclusions. No substantial question of law arises for consideration.

25. Both the Second Appeals are, accordingly, dismissed. There shall be no order as to costs.