
(2014) 02 AP CK 0118
In the Andhra Pradesh High Court
Case No : Second Appeal No. 54 of 2014

Emam Jagan Mohan Reddy	Vs	APPELLANT
Keesari Padma		RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2014) 3 ALT 217

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : Challa Srinivasa Reddy, Advocate for the Appellant; P.S.P. Suresh Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao, J.—This Second Appeal is filed challenging the judgment and decree dt. 19-09-2013 in A.S. No. 52 of 2012 of the I Additional District Judge, Nalgonda reversing the judgment and decree dt. 27-02-2012 in O.S. No. 232 of 2007 of the Junior Civil Judge, Nalgonda. The appellant is the defendant in the suit.

2. The respondent filed the suit for a perpetual injunction restraining the appellant from interfering with her possession and enjoyment of the plaint schedule property which is a vacant site being plot No. 9 admeasuring 250 sq. yds. in Sy. No. 1289 of Arjalabavi village, Nalgonda Mandal and District (for short "the suit plot).

3. The plaintiff's case is that she purchased the suit plot under Ex. A-1 registered sale deed dt. 13-12-2006 from one Kolanupaka Prabhakar Rao who in turn purchased the same under Ex. A-3 dated 29-08-1985, she was put in possession and enjoyment of the property; the defendant who is a stranger wanted to grab the above property by dispossessing her forcibly; that the defendant came to the plot on 06-05-2007 along with anti social elements and

tried to dispossess her from the suit plot and therefore she filed the suit.

4. The appellant/defendant filed a written statement contending that he had purchased suit plot under Ex. B-1 registered sale deed dt. 16-07-1985 and subsequently got executed a rectification deed Ex. B-2 dt. 29-05-2007 correcting the boundaries mentioned in Ex. B-1 dt. 16-07-1985. He contended that the suit plot was part of the land originally belonging to Takoor Kamma, Itikala Pichi Reddy, Jinna Yadagiri Reddy and Y. Sathi Reddy and to manage the land in Sy. No. 1289, GPA was executed in the name of Itikala Pitchi Reddy and Jinna Yadagiri Reddy; that on the date of purchase by the plaintiff's vendor Prabhakar Rao under Ex. A-3, Kamma or her GPA holders have no saleable rights or interest in the suit plot and so they could not have delivered possession thereof to the plaintiff. He contended that the plaintiff with a mala fide intention created Ex. A-1 registered sale deed to grab the suit plot belonging to defendant under the guise of the injunction order passed by the Court.

5. The trial Court framed the following issues:

1. Whether the plaintiff is entitled for grant of perpetual injunction as prayed for?
2. To what relief?

6. The plaintiff examined P.Ws. 1 and 2 and marked Exs. A-1 to A-4. The defendants examined D.Ws. 1 to 3 and marked Exs. B-1 and B-2.

7. By judgment and decree dated 27-02-2012, the trial Court dismissed the suit. It held that the defendant had purchased suit plot under Ex. B-1 dated 16-07-1985, obtained possession and the said sale took place prior to the execution of Ex. A-3 dt. 29-08-1985 in favour of the plaintiff's vendor and therefore the defendant alone had got rights over the suit plot. It held that the neither the plaintiff nor her vendor would get any right in the suit, plot because their possession is not established. It also held that the boundaries were wrongly mentioned in Ex. B-1 and subsequently this was rectified under Ex. B-2. It held that the plaintiff's vendor had no saleable right in the property and therefore the plaintiff did not get any right therein. It also held that the plaintiff failed to prove her possession over the suit plot.

8. Challenging the same, the plaintiff filed A.S. No. 52 of 2012 before the I Additional District Judge at Nalgonda.

9. By Order dt. 19-09-2013, the said appeal was allowed and the judgment of the trial Court was set aside.

10. The lower appellate Court held that the plaintiff purchased the suit plot from her vendor under Ex. A-1 and the plaintiff's vendor had purchased it from the GPA holders of the original owner Kamma under Ex. A-3 dt. 29-08-1985; that the plaintiff's vendor was in possession of the suit plot till the date of execution of Ex. A-1 and that later the plaintiff was in possession. It held that the rectification deed Ex. B-2 dt. 29-05-2007 was obtained by defendant after the

plaintiff filed the suit and obtained interim injunction against him correcting the boundaries in Ex. B-1 so as to match with the suit plot; that the defendant did not file any material to show that the GPA of the executant of the Ex. B-2 was subsisting as on the date of execution of Ex. B-2 dt. 29-05-2007. It also noticed that one of the GPA holders and executant of both Exs. A-3 and B-1 (i.e.) D.W. 2 did not come for cross examination indicating that he wished to avoid the discovery of the true facts and the evidence of D.W. 3, attestor of Exs. B-1 and A-3, also cannot be believed. It held that the plaintiff is a bona fide purchaser of the suit plot under Ex. A-1. The suit plot according to plaintiff was only 250 sq yds in extent, but defendant claims to be a owner of plot of area 300 sq yds, and he did not state anything about the balance 50 sq yds in his evidence. It held that since the site is a vacant site, possession follows title and if the rectification deed Ex. B-2 dt. 29-05-2007 is ignored, then the boundaries in Ex. B-1 (under which the defendant purchased it) do not tally with the boundaries of the suit plot.

11. Challenging the same, this Second Appeal is filed.

12. Heard Sri Ch. Srinivas Reddy, learned counsel for the appellant and Sri P.S.P. Suresh Kumar, learned counsel for the respondent.

13. The learned counsel for the appellant Contended that the judgment of the lower appellate Court is contrary to law and unsustainable; that the lower appellate Court had dismissed the suit giving cogent reasons; that the purchase by defendant of the suit plot under Ex. B-1/dt. 16-07-1985 was earlier in point of time to the purchase by the plaintiff's vendor under Ex. A-3/dt. 29-08-1985 and once the boundaries in Ex. B-1 were corrected by the rectification deed Ex. B-2 dt. 29-05-2007, the defendant has to be held to have acquired title to the suit plot earlier in point of time to plaintiff. He also contended that taking advantage of the discrepancy in Ex. B-1 sale deed as to the boundaries, the plaintiff in collusion with the defendant's vendors purchased the suit plot. He therefore prayed that the judgment of the lower appellate Court be set aside and the judgment of the trial Court be restored.

14. On the other hand, the learned counsel for the respondent contended that the judgment of the trial Court was erroneous and was rightly set aside in the appeal. He further contended that only after the plaintiff filed the suit and obtained a temporary injunction, the defendant woke up and obtained Ex. B-3 rectification deed dt. 29-05-2007 for getting the boundaries corrected in Ex. B-1/ dt. 16-07-1985; that by the date of execution of Ex. B-2, the suit plot had already been sold under Ex. A-3 dt. 29-08-1985 to the plaintiff's vendor and to the plaintiff under Ex. A-1 dt. 13-12-2006; therefore, on the date of execution of Ex. B-2, the title in the suit plot had already got vested in the plaintiff's vendor and in the plaintiff; that Ex. B-2 was obtained clandestinely behind the back of plaintiff and plaintiff's vendor only to grab the property of the plaintiff and the silence of the defendant for a period of 22 years from 16-07-1985 (when Ex. B-1 was obtained by him) till 29-05-2007 (when Ex. B-2 was executed) indicates the

mala fide intention of the defendant and his vendor. He therefore prayed that the appeal be dismissed.

15. I have considered the submissions of both sides.

16. While the plaintiff claims that the suit plot was purchased by her vendor under Ex. A-3 dt. 29-08-1985 and subsequently sold to her in Ex. A-1 dt. 13-12-2006, and since then she is in possession and enjoyment thereof, the defendant claims to have purchased it under Ex. B-1 dt. 16-07-1985, and that the boundaries were wrongly mentioned in Ex. B-1 which were corrected under Ex. B-2 dt. 29-05-2007 and therefore the plaintiff had no right in the plaint schedule property.

17. Since the suit is one for perpetual injunction, prima facie title and possession of the plaintiff is to be looked into. Also since the subject matter is a vacant site/house plot, possession follows title.

18. Although Ex. B-1 dt. 16-07-1985 was executed in favour of the defendant prior to Ex. A-3 dt. 29-08-1985 in favour of the plaintiff's vendor, the fact remains that the boundaries mentioned in Ex. B-1 schedule were admittedly erroneous and they did not correspond to the suit plot. The defendant did nothing to seek rectification of the boundaries from 16-07-1985 till 29-05-2007, when he persuaded his vendor, the GPA of the original vendor to execute Ex. B-2 rectification deed in his favour. But in the meantime, under Ex. A-1 dated 13-12-2006, the plaintiff had purchased the plaint schedule property from her vendor who had in turn purchased it under Ex. A-3/29-08-1985 from the GPA holder of the original owner. The sale deed Ex. A-1 obtained by the plaintiff in respect of the plaint schedule property is prior in point of time to the rectification deed Ex. B-2.

19. It is not the case of the defendant that any notice was issued to the plaintiff before execution of Ex. B-2 by either the defendant or GPA holder of the original owner. Once the title in respect of the suit plot with the boundaries mentioned in the plaint schedule had been conveyed in favour of the plaintiffs under Ex. A-3/29-08-1985 and in favour of the plaintiff under Ex. A-1, the original owners could not have executed Ex. B-2 since on the date of execution of Ex. B-2, they did not have any subsisting right in the suit plot. The fact that the defendant woke up after the plaintiff secured a temporary injunction against him clearly indicates the negligence of the defendant in keeping quiet for a period of 22 years. It was the duty of the defendant to verify the boundaries of the plot which he has purchased under Ex. B-1 and he cannot state that since nobody raised any dispute, he kept quiet for such a long time of 22 years.

20. The above facts indicate collusion between the defendant and the GPA holders of the original owner Kamma and that in order to harass the plaintiff, they executed Ex. B-2. One of the GPA holders and executant of Exs. B-1 and A-3 i.e. D.W. 2 did not offer himself for cross examination obviously because he would be questioned about the mischievous way in which Ex. B-2 was executed

and he wanted to avoid explaining it. Since the title to the suit plot is with the plaintiff, and since possession follows title, the plaintiff is deemed to be in possession of the suit plot on the date of filing of the suit.

21. Therefore, I do not find any error in the judgment of the lower appellate Court warranting interference u/s 100 CPC. There is no question of law arising for consideration in the Second Appeal.

22. Therefore, the Second Appeal is dismissed at the stage of admission. No costs. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.