(2006) 12 AP CK 0051

In the Andhra Pradesh High Court

Case No : Second Appeal No. 102 of 1997

Kallimakula Reddy Saraswathamma and Others	APPELLANT
Vs	
Smt. V. Vasanthamma	RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, Order 6 Rule 4

Citation : (2007) 3 ALD 800

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Prathipati Venkateswarlu, for the Appellant; P. Gangaiah Naidu, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The 1st appellant is the mother of appellants 2 to 4. It is endorsed that appellants 2 to 4 are not necessary parties to the Second Appeal. Therefore, the 1st appellant is referred to as the appellant. The judgment passed by the Court of Additional District Judge, Madanapally, in A.S. No. 208 of 1990, decreeing the suit in O.S. No. 154 of 1985, on the file of the Court of Principal District Munsif, Punganur, is challenged in this Second Appeal.

2. The respondent filed the suit for the relief of cancellation of gift deed, dated 5.4.1984, executed by one Bandla Mangamma, in favour of the appellant, as being vitiated by fraud and undue influence, and for perpetual injunction, in respect of the suit schedule property. It was pleaded that the mother of the respondent died, when she (respondent) was a child, and thereafter, her father married Mangamma, who, in turn is said to have looked after and brought up the respondent. Mangamma had no issues of her own. The respondent pleaded that she was residing with her husband, and looked after the interest of her step mother. She alleged that the appellant is a distant relation of Mangamma, and taking advantage of her absence, the appellant brought into existence, a gift deed dated 5.4.1984, by playing fraud and misrepresentation upon Mangamma,

in respect of the suit schedule property. Few days thereafter, Mangamma is said to have revealed the fraud played upon her, by the appellant and her husband, and immediately she executed a deed of cancellation on 24.4.1984, and on the same day, donated the suit schedule property in favour of the respondent. With these and other subsidiary pleadings, the respondent prayed for cancellation of the gift deed.

3. The appellant filed a written statement, denying the allegations of the respondent. She pleaded that the respondent neglected to maintain her step mother, Mangamma, and that herself and her husband were looking after the welfare of the said lady. She stated that having been impressed by the services rendered by her, Mangamma executed the gift deed, and the same was acted upon, by taking delivery of the suit schedule property. It is also contended that the subsequent cancellation would not entail in any legal consequences.

4. The trial court dismissed the suit, through its judgment dated 12.10.1990. Thereupon, the respondent filed A.S. No. 208 of 1990, and it was allowed on 3.8.1996.

5. Sri Nuthalapati Krishna Murthy, learned Counsel for the appellant, submits that though the respondent claimed the relief of cancellation of gift deed, pleading the grounds of fraud and misrepresentation, the necessary facts constituting such factors were not supplemented in the plaint, as required under Rule 4 of Order VI CPC, and despite the same, the lower appellate court decreed the suit. He submits that once the gift was acted upon by the appellant, it was not permissible for Mangamma, to cancel it, and though she was alive, quite for some time, even after the suit was filed, no steps were taken to examine her as a witness, nor she was impleaded as a party. He has placed reliance upon certain precedents, in support of his contention.

6. Sri P. Gangaiah Naidu, learned senior counsel for the respondent, on the other hand, submits that necessary facts, constituting fraud and misrepresentation, were clearly pleaded in the plaint, and were proved through evidence. He contends that the admissions of the appellant, as DW-1, have virtually proved the plea of fraud and misrepresentation. He further submits that there is nothing on record to disclose that the possession of the suit schedule property was delivered to the appellant, and before any steps in that direction could be taken, the gift deed was cancelled.

7. The trial court framed the following three issues, touching upon the controversy between the parties:

1) Whether the gift deed dated 5.4.1984 in favour of D-1 was obtained by fraud and undue influence?

2) Whether the gift deed dated 5.4.1984 in favour of first defendant Bandla Mangamma is liable to be cancelled?

3) Whether the plaintiff is entitled for injunction?

The respondent deposed as PW-1, and PWs-2 and 3 were also examined as witnesses, on her behalf. She filed Exs.A-1 to A-12. The appellant deposed as DW-1, and she filed Ex.B-1, the original gift deed dated 5.4.1984 and Ex.B-2, the cist receipt. Ex.A-1 is the certified copy of Ex.B-1. The trial court dismissed the suit. The appeal preferred by the respondent was allowed. In view of the submissions made by the learned Counsel for the parties, the following questions arise for consideration, in this Second Appeal:

a) Whether the respondent complied with the requirement under Rule 4 of Order VI CPC? and

b) Whether the respondent proved that Ex.A-1 is vitiated by fraud and misrepresentation?

The respondent filed the suit for a declaration that Ex.A-1 is vitiated on account of fraud and misrepresentation. Rule 2 of Order VI CPC mandates that the pleading shall contain a concise statement of material facts, which are relied upon by the parties, for their claim or defence. The parties are exhorted not to incorporate evidence in the pleadings. Rule 4 or Order VI CPC, makes a departure from this requirement, wherever the factors, such as, fraud, misrepresentation, breach of trust, and the like, are pleaded. The rule ordains that where such factors are pleaded, necessary particulars must be furnished. Form-33 of Appendix-A of C.P.C., provides proper guidance, in this regard. In ensuring compliance with the relevant provisions of Order VI CPC , wherever the ground of fraud, misrepresentation, etc, are pleaded, care needs to be taken to ensure that elaboration of facts, touching on the said factors, is not mistaken for evidence. The defendant cannot be taken by surprise at the stage of trial, by a plaintiff, by leading evidence on the aspect of fraud and misrepresentation. Necessary factual background must be present in the plaint, so that it can be supplemented in evidence. However, a plaintiff cannot be expected to elaborate the contentions on such aspects, up to the level of furnishing the details of evidence, which he proposes to adduce to support the plea of fraud and misrepresentation. Broadly stated, the requirement would be that the allegation, as to the fraud and misrepresentation, with permissible details, must be stated in the plaint, and the manner in which they were perpetrated, is a matter to be elaborated at the stage of trial. In the plaint filed by her, the respondent stated in para-6 of the plaint as under:

The plaintiff submits that defendants 1 and 2 are distantly related to the above said Bandla Mangamma and during the last two years have been constantly visiting her house. The defendants also knew about the slight misunderstanding between the plaintiff and her husband on the one hand and Bandla Mangamma on the other side with regard to the later''s properties. Gradually the defendants and others who had an eye on the properties and who have been scheming to grab at them conspired together and began dominate her and they also alienated her from others. The defendants by misusing their position, by undue influence and by playing fraud obtained a registered gift deed on 5.4.1984 in respect of the suit land in favour of 1st defendant with false recitals. The said document was not executed by Bandla Mangamma out of her free will and volition and it was only a product of the mechenations of the defendants. It was never intended to be acted upon nor acted upon. Mangamma alone had been exercising rights of ownership and possession. At any rate the gift deed dated 5.4.1984 is vitiated by fraud and undue influence. Soon after the gift deed there was a marked change in the attitude of the defendants towards Mangamma.

Whenever any allegation of fraud, misrepresentation and the like are made, Rules 2 and 4 have to operate in tandem, and not to the exclusion of each other. The plea, taking on the said aspects must be contained in the pleading, as a measure of compliance with Rule 4. At the same time, the caution under Rule 2, to exclude evidence must be honoured. Viewed in this context, the statement contained in para-6 of the plaint can be treated as sufficient. Now remains the second question. By executing a gift deed or a will deed, an individual can direct the manner, in which his or her properties must pass on to others, contrary to the course indicated in the relevant Law of Succession. While under the will, the devolution takes place after the death of executant; under the gift, the transfer takes effect during his life time. In the mater of enforcement of will, the courts view the documents with a semblance of suspicion, for the reason that the person, who executed the will, will not be available to vouch for its correctness, by the time it comes into operation. In fact, a will gets its life, only after the death of its author. Apart from requiring the party relying upon it to prove the same, in accordance with the provisions of the Evidence Act, the court places him under obligation to explain the suspicious circumstances, if any. The element of suspicion does not exist in the case of gift deeds. Their enforceability depends upon proof of execution and acceptance of the gift. As in the case of any other documents transaction, those which bring about other transactions, the factors, such as, fraud, misrepresentation, undue influence, etc, if proved, would vitiated the gift deeds also.

It is not in dispute that Mangamma was the step mother of the respondent and both of them were living together, on account of the marriage of the respondent. The respondent narrated the nature of her relationship, with Mangamma and the manner in which Ex.A-1 was brought into existence. She stated that Mangamma was suffering from ailments, such as blood pressure, and mostly she was attending upon her. She has also stated that the appellant and her husband are distantly related to their family and own lands, adjacent to the suit schedule property. It is her case that when she verified with Mangamma about Ex.A-1, she was informed that Mangamma did not know the contents, and soon thereafter, a deed of cancellation was executed. In her evidence, she repeated the contents of the plaint, and nothing was elicited through her, to discredit her version. She spoke about the execution of a deed of cancellation, dated 24.4.1984, marked as Ex.A-2, and execution of a gift deed in her favour by Mangamma, on the same day. This document was marked as Ex.A-3. Persons related to these documents were also examined as PWs.2 and 3.

There is a clear recital in Ex.A-2 that Ex.A-1 was brought into existence, through fraud. PW-3 is a witness to the said document. The allegation of fraud emanated from the donor under Ex.A-1, in the form of a recital in Ex.A-2. Once the witness of the said document had deposed to the execution thereof, the respondent can be said to have discharged her burden to prove the plea of fraud. Ex.A-1 is equivalent to Ex.B-1. In Ex.A-1, it is stated that the appellant is the wife of Mangamma''s sister''s son. No mention is made about the existence of legal heirs. The predominant factor stated therein is that Mangamma had gifted the property, since she had no issues. In her written statement, the appellant stated as under:

The 1st defendant is very closely related to B. Mangamma, through her father, and both the defendants were alone looking after the welfare of her, at Royalpeta.

In the cross-examination of the appellant, who deposed as DW-1, it was elicited as under:

I do not know the father''s name of Mangamma and I do not know her mother''s name also. I do not know whether Mangamma had brothers or sisters. My father''s native place is Vellore". From a close scrutiny of the contents of Ex.A-1, the stand of the appellant in her written statement and the statement made by her in her evidence, it becomes evident that there is fraud and misrepresentation of facts, in the whole episode of the gift, in favour of the appellant. When the respondent had discharged her initial burden of proving fraud by stating the relevant factors and by placing oral and documentary evidence before the trial court, it was expected of the appellant, to prove the genuinity of Ex.A-1, at least, in the context of its execution. She has not chosen to examine any persons, who figured as witnesses to Ex.A-1. If Mangamma was so well disposed towards her, somebody in the village certainly could have spoken to the said fact, in which event the allegation of misrepresentation or fraud, could have been disproved, to a substantial extent. As observed earlier, except the solitary deposition of the appellant, no evidence was adduced on her behalf.

8. If the gift through Ex.A-1 was genuine and the delivery of possession was real, the same ought to have been reflected in the revenue records. Except filing a cist receipt, the appellant did not place any material before the trial court. On the other hand, the respondent filed Ryot Passbook and cist receipts for various years. One important fact that needs to be taken into account is that cist receipt was issued in favour of the respondent on 10.5.1984, marked as Ex.A-12, and another receipt for the same year was issued in favour of the appellant on 24.5.1984 (Ex.B-2). The manner in which the appellant had accepted the gift or had received the possession of the property, remained unexplained. The trial court did not take these aspects, into account, and dismissed the suit. The lower appellate court corrected the mistake committed by the trial court, and allowed the appeal. This Court does not find any basis to interfere with the same.

9. The Second Appeal is accordingly dismissed. There shall be no order as to

costs.

