

(2011) 02 AP CK 0038

In the Andhra Pradesh High Court

Case No : Second Appeal No. 11 of 2004

Katkuri Bhaskar Reddy and Katkuri Sanjeeva Reddy

APPELLANT

Vs

Katkuri Mattamma, Vangala Poolamma and Mamilla
Sathamma

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Citation : (2011) 8 RCR(Civil) 944

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : A.M. Rao, for the Appellant; A. Rajasekhara Reddy, for the
Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This second appeal is filed against the judgment and Decree dt. 7.10.2003 in A.S. No. 41 of 2001 passed by the IV Additional District Judge, Nalgonda confirming the judgment and Decree in O.S. No. 96 of 1992 passed by the Senior Civil Judge, Nalgonda.

2. I have heard the learned Counsel on either side.

3. For the sake of convenience, the parties will be referred to as the Plaintiff and the Defendants.

4. The Plaintiff who is the mother of Defendants 1 and 2 filed the above suit seeking cancellation of the registered sale deed dt. 6.9.1991 on the ground that it was obtained by her son by playing fraud on her.

5. Before the trial court, the Plaintiff herself was examined as Pw.1 and examined Pw.2 and got marked Exs. A.1 and A.2. The Defendants examined Dws 1 to 5 and got marked Exs:B.1 to B.8.

6. The trial court, after evaluating the evidence, both oral and documentary, upheld the contention of the Plaintiff and held that the registered sale deed dt.

6.9.1991 (Ex:B.5) was obtained by fraud by the Defendants 1 and 2 and accordingly passed a decree canceling Ex:B.5.

7. Aggrieved by the judgment and decree of the trial court, the Defendants filed A.S. No. 41 of 2001. The 1st Appellate Court after reappreciating evidence confirmed the findings recorded by the trial court, by the impugned judgment and decree. Challenging the same, the present second appeal is filed.

8. The contention urged on behalf of the Appellants in this second appeal is that both the courts below took an erroneous view regarding burden of proof in a suit for cancellation of registered sale deed on the ground of fraud and held that the burden of proof lies on the Defendants and therefore it raises a substantial question of law. The learned Counsel for the Plaintiff brought to my notice the findings of fact and also the finding on burden of proof recorded by both the courts below. Both the courts below were very much conscious about the legal proposition that the party who alleges fraud must prove the existence of fraud. However, both the courts below held that since the evidence was already adduced by both the parties, the burden of proof becomes insignificant and a decision has to be rendered basing on the preponderance of probabilities.

9. Both the courts below have concurrently held that in a case of this nature relating to fraud, it is not possible for the Plaintiff to adduce direct evidence and whether fraud has been played or not has to be decided basing on the circumstances under which the sale deed Ex:B.5 came to be executed. Admittedly, the Plaintiff was in the house of the Defendants 1 and 2 for the purpose of medical treatment at the relevant point of time and that the contention of the Plaintiff is that the Defendants 1 and 2 obtained her thumb impressions on some papers stating that her thumb impressions were necessary for claiming medical bills and that she did not know the contents of the papers on which she put her thumb impressions and also that she did not know that she was selling away her property to the Defendants 1 and 2. Both the courts below concurrently held that the contention of the Defendants that the Plaintiff was proposing to perform the marriage of her daughter and therefore the Plaintiff sold the land to them, is quite unconvincing since the said marriage took place five years after execution of the sale deed in question. Both the courts below also took into consideration the fact that Defendants 1 and 2 have partitioned their properties about 11 years prior to execution of the sale deed in question and that normally if they purchase any property from the Plaintiff, they would obtain two separate sale deeds but not a single sale deed jointly.

10. Both the courts below observed that the sale deed in question is in English language and that there is no evidence to show that the contents of the same were read over and explained to the Plaintiff in Telugu she being an illiterate person, it is an essential requirement for obtaining any document for her. Both the courts below further observed that if at all the Plaintiff wanted to give her property to the Defendants 1 and 2, she would not normally execute a sale deed in favour of them, who are no other than her own sons since it involves lot of

expenditure. Both the courts below took notice of the fact that Pws 1 and 2 were not suggested by the counsel for the Defendants 1 and 2 in their cross-examination that the contents of Ex:B.5 sale deed were read over and explained to the Plaintiff in Telugu before obtaining her thumb impressions on it. Another important fact, which was noticed by both the courts below is that according to Defendants 1 and 2 their fathers-in-law were present at the time of execution of the sale deed but they did not examine the said persons on their behalf. Concurrent findings were recorded by both the courts below basing on the proposition that when a document was in the language which is not known to the executant the contents of the same should be read over and explained to the executant in the language known to her and in the instant case there is no such evidence. Both the courts below have held specifically that the Plaintiff who was examined as Pw.I was not aware of the contents of Ex:B.5, sale deed. Another crucial fact noticed by both the courts below is that sale consideration was said to have been paid on two occasions in the presence of the fathers-in-law of the Defendants 1 and 2 even prior to execution of sale deed but they did not produce any receipts issued by the Plaintiff before the court. Considering all the above facts, both the courts have held that Defendants 1 and 2 had obtained Ex:B.5, the registered sale deed by playing fraud on the Plaintiff who is no other than their mother and accordingly-declared that the said document is not valid.

11. The learned Counsel for the Plaintiff relied on a decision in Kondiba Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, wherein the Supreme Court held that the High Court cannot substitute its own opinion for that of the 1st Appellate Court unless it finds that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of applicable law or contrary to the law as propounded by the Apex Court or based upon inadmissible evidence or no evidence.

12. The Supreme Court further held that if the 1st Appellate Court has exercised its discretion in a judicial manner, its decision cannot be regarded as suffering from an error either of law or procedure requiring interference in second appeal and that the trial court could not have decided differently is not a question of law justifying interference in second appeal.

13. Coming to the facts of the present case, both the courts below have taken a correct view regarding burden of proof more particularly keeping in view the fact that the Defendants who are the sons of the Plaintiff, are in a position to dominate the will of the Plaintiff and also considered the enite circumstances which are mentioned hereinabove ultimately arrived at a finding that Ex:B.1 was obtained by playing fraud on the Plaintiff.

14. Since the concurrent findings recorded by both the court below are based on evidence and were recorded after thoroughly considering the circumstances of the case, it cannot be said that they are either perverse or contrary to the evidence on record required to be interfered with in this second appeal. No substantial question of law arises for consideration in this second appeal and

therefore the same is dismissed. There shall be no order as to costs.