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In the Andhra Pradesh High Court

Case No : Second Appeal No. 1130 of 2012

Kowta Subrahmanya Sastry and Another — APPELLANT

Vs

Kowta Chandramouli and Others — RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 2 ALD 71 : (2014) 3 ALT 28

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C. Ramahandra Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This Second Appeal is filed by the defendants 1 and 2 in O.S. No. 622 of 2007 on the file of the I Additional Senior Civil Judge, Guntur. The suit was filed by the 1st respondent herein, for the relief of cancellation of a registered Sale Deed, dated 09.04.2007, executed by the 2nd respondent in favour of the 2nd appellant. The suit was decreed by the trial Court on 26.06.2010. A.S. No. 435 of 2010 filed by the appellants herein in the Court of the V Additional District Judge (Fast Track Court), Guntur, was dismissed on 31.07.2012. Hence, this Second Appeal. For the sake of convenience, the parties are referred to, as arrayed in the suit. The facts, that are relevant for the purpose of the second appeal, are as under:

The plaintiff and the 1st defendant are the sons of the 3rd defendant. The 2nd defendant is the son of the 1st defendant. The partition in the family, comprising of the 3rd defendant and his four sons including the plaintiff and the 1st defendant, has taken place in the year 1985. The suit schedule property fell to the share of the plaintiff. Claiming to be the Power of Attorney of the plaintiff, his father, the 3rd defendant, executed a Sale Deed in respect of the suit schedule property in favour of his grand-son, the 2nd defendant-son of the 1st defendant, on 09.04.2007.

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2. The plaintiff pleaded that since he was residing at Hyderabad, he intended to alienate the suit schedule property and, in fact, entered into an agreement with one Mr. Gorikapudi Bujji Babu for a consideration of Rs. 19,00,000/-, but the same was cancelled through notice, dated 07.04.2007, on account of the default committed by the proposed purchaser. He pleaded that when he was trying to alienate the property, the 1st defendant got issued a notice on 13.01.2007, alleging that he i.e., the plaintiff, entered into an agreement with him to sell the property, on 31.03.2007, and in that behalf, notices and replies were exchanged. He pleaded that the 1st defendant, who is the eldest brother, clandestinely obtained the Sale Deed in favour of his son, the 2nd defendant, by pressurizing and playing fraud upon the 3rd defendant, their father.

3. The suit was opposed by the 1st defendant, by filing a written statement. He pleaded that though the partition took place among the four brothers, their father, the 3rd defendant, obtained General Power of Attorney from all the sons in the year 1985 itself to ensure that in the event of any quarrels arising among his sons, he can settle the same amiably. He contends that the plaintiff has created a delicate situation in the family, by executing agreements in favour of various persons, and with a view to protect reputation to the family, the 3rd defendant has executed the Sale Deed.

4. The 3rd defendant filed a written statement, stating, inter alia, that the Sale Deed in question was obtained from him, without furnishing proper information and exerting pressure upon him. He pleaded that taking advantage of his old age and helplessness, the 1st defendant brought the Sale Deed into existence.

5. The trial Court decreed the suit and the appeal preferred by the defendants 1 and 2 was dismissed.

6. Sri C. Ramachandra Reddy, learned counsel for the appellants/defendants 1 and 2, submits that the 3rd defendant has changed his stand obviously on being won over by the plaintiff and the trial Court and the lower appellate Court failed to notice the collusion between the plaintiff and the 3rd defendant. He contends that once a Sale Deed is executed by the General Power of Attorney, it is equally binding upon the principal and the only remedy available to the principal is to sue his Power of Attorney, and that the Sale Deed executed by the latter cannot be set aside.

7. The facts, in brief, that gave rise to the filing of the second appeal, have already been furnished in the preceding paragraphs. The suit was filed for the relief of cancellation of a Sale Deed, dated 09.04.2007, and for perpetual injunction, in respect of the suit schedule property. While the beneficiary under the Sale Deed is the 2nd defendant, the 3rd defendant, who executed the Sale Deed in his capacity as the General Power of Attorney, has supported the case of the plaintiff.

8. On the basis of the pleadings before it, the trial Court framed the following issues additional issues for consideration:

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ISSUES:

1) Whether the registered sale deed dated 09.04.2007 executed by the 3rd defendant in favour of the 2nd defendant is liable to be cancelled?

2) Whether the plaintiff is entitled for perpetual injunction as prayed for?

3) Whether the plaintiff has got right and title over the suit property?

4) To what relief?

ADDITIONAL ISSUES:

1) Whether the 3rd defendant is pressurized to sign and executed the sale deed dated 09.04.2007?

2) Whether the suit is vexatious and therefore suit is liable to be dismissed with exemplary costs?

9. The plaintiff deposed as P.W. 1 and he filed Exs. A. 1 to A. 20. The 3rd defendant deposed as D.W. 1, the 1st defendant as D.W. 2, the 2nd defendant as D.W. 2 and another witness, by name, Ch. Srilaxmi, was examined as D.W. 4. The documentary evidence filed on behalf of the defendants comprised of Exs. B. 1 to B. 3. The certified copy of the alleged General Power of Attorney was filed as Ex. B. 1.

10. The suit was decreed and the lower appellate Court did not frame any independent points, but discussed the matter on the basis of the issues framed by the trial Court. The appeal was dismissed.

11. The defendants 1 and 2 do not dispute the fact that the plaintiff is the absolute owner of the suit schedule property. It is not as if the plaintiff was stranger to them or that any discussion or negotiation has taken place between them. The family partition has taken place way back in the year 1985 and ever since then, the brothers are in possession of the respective parties. The 3rd defendant is aged about 100 years. Whatever may have been the circumstances, under which Ex. B. 1, General Power of Attorney, was executed in the year 1985 in his favour, it is just unthinkable that the plaintiff, who is in private employment and he is hale and healthy, depended upon his 100 years old father to administer his properties.

12. The oblique motive of the 1st defendant to knock away the property of the plaintiff is evident from the fact that he got issued a notice in the year 2007, alleging that the plaintiff executed an Agreement of Sale in his favour. Phenomenal correspondence in the form of notices and replies ensued and all of them are marked as Exs. A. 1 to A. 20. When there is a serious litigation between the plaintiff and his elder brother, the 1st defendant, in relation to the very property and voluminous correspondence has ensued, it is just unthinkable that the plaintiff intended to sell the property in favour of the son of the 1st defendant.

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13. The theory put forward by the 1st defendant in his written statement is somewhat curious. He stated that the 3rd defendant has utilized "his statutory power" by pressing into service, the General Power of Attorney, in view of the "humiliation and unrest" caused to him. When the dispute is between the plaintiff and the defendants 1 and 2, it is not known as to what humiliation the 3rd defendant felt, on account of it.

14. The 3rd defendant has exhibited his elderliness, maturity and truthfulness, by filing a written statement as well as by deposing as a witness. He stated that the 1st defendant has pressurized him to such an extent that he had no other alternative, except to execute the document. Nothing objectionable was elicited from him in the cross-examination. This Court is compelled to observe that though the 1st defendant is working as a lecturer, he has stooped down to a low level and resorted to the acts against his father and brother, which, even deceitful persons would not undertake against their enemies or gullible persons.

15. The trial Court and the lower appellate Court has taken the correct view of the matter and no substantial question of law arose for consideration in the second appeal.

16. The Second Appeal is, accordingly, dismissed. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in the second appeal shall stand disposed of.

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