

(2002) 04 AP CK 0074
In the Andhra Pradesh High Court
Case No : SA No. 186 of 1992

Nalamuru Nadipi Subbanna	Vs	APPELLANT
Kataru Chennamma and Others		RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Transfer of Property Act, 1882 — Section 45

Citation : (2002) 4 ALD 859 : (2002) 2 APLJ 190

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : R. Subba Rao, for the Appellant; C. Sadasiva Reddy, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This appeal is directed against the judgment and decree of the Subordinate Judge, Proddatur in AS 21 of 1988 preferred against the judgment and decree in OS 86 of 1974 on the file of the Principal District Munsif, Proddatur. The appellants is the plaintiff and the respondents herein are the defendants. The appeal is respect of R2 to R6 is dismissed for default through the order dated 22-3-1994.

2. The plaintiff filed the suit for partition of the suit schedule property in two equal shares and to put him in possession of one such share. The 1st defendant alienated the suit schedule property to defendants 3 to 6, therefore, they are also impleaded as parties in the suit.

3. The plaintiff contended that the 1st defendant, one Giddaluru Naga Munaiah and himself jointly purchased an extent of 22 cents of land out of 66 cents in S.No.431/ B1 of Proddatur town under a registered sale deed dated 4-7-1962 and they are in joint possession of the same. The 2nd defendant who is the son of Giddaluri Nagamunaiah sold his 1/3 share situated on eastern side, after due partition to one P. Musalaiah and one China Narayana under a registered sale

deed dated 17-8-1979. The remaining 2/3rd of the land covered by the suit schedule remained joint between the plaintiff and the 1st defendant. They wanted to put up houses jointly, but they could not do so due to domestic problems. The 1st defendant made efforts to sell away the undivided half share of the plaintiff to third parties. Any alienation by the 1st defendant without partition of the plaintiffs share is illegal. Hence the suit for partition and separate possession.

4. The 1st defendant filed a written statement resisting the suit contending that the suit schedule property and the remaining 1/3rd comprising an extent of 22 cents was purchased by the plaintiff, G. Nagamuniah and himself for a valuable consideration of Rs. 900/-. The 1st defendant subscribed Rs. 600/- and the plaintiff and Nagamuniah subscribed Rs. 300/-, accordingly it was agreed through an agreement dated 4-7-1962 that the 1st defendant should be the owner of the suit land and the plaintiff and Nagamuniah are jointly entitled to 1/3rd share situated on the eastern side. Since the 1st defendant is in possession and enjoyment of the suit land and became the absolute owner of the same. The plaintiff wilfully suppressed the said agreement and filed the suit for wrongful gain taking advantage of the illiteracy and helplessness of the 1st defendant who is also a widow. The plaintiff has no share in the suit property. Therefore, the suit is liable to be dismissed with costs.

5. The 3rd defendant filed a written statement contending that the plaintiff, the 1st defendant and Nagamuniah are equally entitled to the total extent of 0-22 cents, that the 2nd defendant sold the eastern 1/3rd to one P. Musalaiah and D. China Narayana under two registered sale deeds for valuable consideration on 17-8-1979 and subsequently the 3rd defendant purchased the said property for consideration and obtained possession of the same. The 3rd defendant further contended that the immediate western 1/3rd is in the possession of the plaintiff and the extreme 1/3rd is in the possession of the 1st defendant.

6. The 4th defendant filed a written statement contending that the 5th defendant and himself purchased the extreme western portion of the suit survey number from the 1st defendant for a consideration of Rs. 10,500/- on 8-3-1985 under a registered sale deed and obtained possession of the same and they in turn sold 2 cents to the 6th defendant under a registered sale deed. He further contended that he also purchased 2.5 cents out of 5 land cents of the defendant for Rs. 5,500/- on 19-11-1995 under a registered sale deed and got possession of the same. He became absolute owner of the suit scheduled mentioned property. The suit is therefore liable to be dismissed with costs.

7. The 5th defendant adopted the written statement of the 4th defendant.

8. The plaintiff filed a rejoinder denying the allegations made by the defendants.

9. The trial Court on the basis of the pleadings framed appropriate issues. The plaintiff in order to prove his case examined PW1 to PW3 and marked Exs.A1 to A4. The defendants examined DWs.1 to 3 marked Exs.B1 to B3. The reports and

the connected material relating to the reports of the experts are marked as Exs.C1 to C23

10. The trial Court after considering the oral and documentary evidence held that Ex.B2 agreement between the plaintiff, the 1st defendant and G. Nagamunaiah is true, that the suit is bad for non-joinder of Musalaiah as a party to the suit proceedings, that the 1st defendant is the absolute owner of the suit property, that the 1st defendant is entitled for the entire suit property and that the plaintiff do not have any share in the suit property. Accordingly the trial Court through its judgment dated 22-7-1988 dismissed the suit by holding that the plaintiff is not entitled for partition and separate possession of any share. The plaintiff being aggrieved by the judgment and decree of the trial Court preferred AS 21 of 1988 before the Subordinate Judge, Proddatur. The 1st appellate Court after considering the oral and documentary evidence available on record and after going through the judgment of the trial Court Confirmed the judgment and decree of the trial Court in all respects and dismissed the appeal through its judgment dated 5-2-1992. The plaintiff again being aggrieved by the judgment and decree of the 1st appellate Court preferred this appeal challenging its validity and legality.

11. There is a concurrent finding of fact by the Courts below supported by sufficient reasons. This Court is, therefore, not inclined to interfere with the findings of fact unless the findings are not on the basis of the evidence or tainted with perversity.

12. On perusal of the grounds of appeal it is noticed that the following is the substantial question of law to be considered by this Court:

Whether the 1st appellate Court erred in not drawing a presumption u/s 45 of the Transfer of Property Act (for brevity the "Act") that all the purchasers under Ex.B1 are entitled to equal shares?

13. The learned Counsel for the appellant submitted that since the sale deed did not reflect that the 1st defendant is entitled to 2/3rd share and that the plaintiff and Nagamunaiah are both entitled to 1/3rd share, it has to be held that all the three of them are entitled to equal share in the extent of 22 cents purchased by them under Ex.A1 sale deed by virtue of Section 45 of the Act

14. Section 45 of the Transfer of Property Act reads as follows:

"Section 45 - Joint transfer for consideration --Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interest to which they were respectively entitled in the fund: and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interest in such property in proportion to the

shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property".

15. According to this section where an , immovable property is transferred for consideration to two or more persons and when such consideration is paid out of the fund belonging to them in common, in the absence of a contract to the contrary, they are entitled to equal shares. In the present case, the 1st defendant produced Ex.B2, an agreement executed between the plaintiff, the 1st defendant and Giddaluru Nagamunaiah for the entire land of 22 cents, on the date of Ex.B1 (original of Ex.A1) registered sale deed. As per the terms of the said agreement the 1st defendant is entitled to 2/3rd share on the western side, since he contributed Rs. 600/- and the plaintiff and G. Nagamunaiah are both entitled to 1/3rd share on eastern side since they contributed Rs. 300/- out of the total sale consideration of Rs. 900/- under Ex.B1 sale deed. Both the Courts below have concurrently held that Ex.B2 agreement is true and is binding on the parties including the plaintiff. The Courts below have given sufficient reasons in support of the finding on the basis of the evidence available on record. If there is no contract between the parties regarding the extent of share each of them entitled to, Section 45 of the Act can be invoked and it can be held that all the purchasers are entitled to equal shares. The learned Counsel for the appellants - plaintiff cited a judgment of the Orissa High Court in Debaraj Pradhan and Others Vs. Ghanshyam and Another, wherein the Orissa High Court held that in the absence of specific recital regarding the extent of share each purchaser is entitled to, it shall be presumed that the purchasers are entitled to equal shares.

16. In Durlabhji Dhanjibhai Patel and Others Vs. Competent Authority and Deputy Collector, Surat and Others, , the Gujarat High Court while referring to Section 45 of Transfer of Property Act 1882 held that whenever a property is purchased by some persons jointly under a registered sale deed, each of them should be treated as co-owner entitled for equal share in the property in the absence of specific mention about their shares in the sale deed.

17. The principle laid down in the above decisions is not applicable to the facts of the present case, in pursuance of a contract between the parties under Ex.B2 regarding the shares to which each of them is entitled to. When once it is held that the terms of Ex.B2 are binding on the plaintiff and other purchasers, it has to be concluded that the plaintiff has no right over the suit property and he is not entitled for partition of the same. The Courts below have extensively dealt with the oral and documentary evidence and held that Ex.B2 is binding on the plaintiff, the 1st defendant and Giddalum Nagamunaiah.

18. The findings of fact given by the Courts below are supported by sufficient reasons and I do not find any perversity in the findings of the 1st appellate Court.

19. In the light of the above discussion, I do not find any force in the grounds of

appeal and I hold that in view of Ex.B2 agreement between the parties, Section 45 of the Transfer of Property Act will not come into operation and there is no scope to draw any presumption as provided u/s 45 of the Act. Hence the appeal must fail.

20. In the result, the appeal is dismissed with costs by confirming the judgment and decree of the Sub-Court, Proddatur in AS 21 of 1988.