
(2002) 07 AP CK 0085

In the Andhra Pradesh High Court

Case No : AS No. 82 of 1987 and CMP No. 18310 of 2001

Palla Sampath Kumari

APPELLANT

Vs

Kinthala Venkata Rao and Another

RESPONDENT

Date of Decision : 29-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4
Evidence Act, 1872 — Section 104, 114
Limitation Act, 1963 — Article 59
Registration Act, 1908 — Section 34

Citation : (2003) 3 ALD 115 : (2003) 6 ALT 637

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : C. Poornaiah, for the Appellant; M.S.K. Sastry and P. Murali Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—The plaintiff in O.S. No. 58 of 1984, on the file of the Court of the Additional Subordinate Judge, Srikakulam, is the appellant. She filed the suit for declaration that the relinquishment deed dated 18-7-1980 [Ex.A-6] executed by her in favour of the 1st respondent (1st defendant) in respect of the plaint "A" schedule property, hereinafter called the suit property, is not true and is vitiated by fraud, and as such, she continues to be the owner thereof and for the consequential relief of possession of the suit property by ejecting the defendants [respondents 1 and 2] therefrom.

2. The case of the appellant, is that the suit property was purchased by her mother on 16.4.1928 and so consequent on the death of her mother in 1947, as per the Law of succession at that time, she alone became entitled to the suit property absolutely and the 1st respondent who was managing all the properties inherited by her from her mother, fraudulently obtained Ex.A-6 relinquishment deed dated 18-7-1980 from her and sold a part of her property shown, in the plaint B Schedule to the 2nd respondent. Since Ex.A-6 relinquishment deed was

obtained by 1st respondent from her by playing fraud the same is liable to be set-aside. 1st respondent remained exparte. The case of the 2nd respondent is that the 1st respondent, with a view to gain unlawfully at his expense filed the suit in the name of the plaintiff. In support of her case, appellant examined herself as PW-1 and another witness as PW-2 and marked Exs.A-1 to A-8. 2nd respondent examined her husband as DW-1 and eight other witnesses as DWs.2 to 9 and marked Exs.B-1 to B-16. The trial Court holding that appellant failed to establish that Ex.A-6 relinquishment deed dated 18-7-1980 is vitiated by fraud, dismissed the suit. Hence, the appeal by plaintiff.

3. The point for consideration is whether appellant is entitled to the declaration and consequential relief sought?

4. The main contention of the learned Counsel for the appellant is that since the suit property was the Stridhana property of the mother of appellant, consequent on the death of her mother prior to the coming into force of Hindu Succession Act, 1956, appellant who is her only daughter became absolutely entitled to the suit property, without reference to the 1st respondent and so the question of appellant executing a relinquishment deed in respect of the suit property in favour of the 1st respondent does not arise, and in any event by virtue of Ex.A-6 relinquishment deed, 1st respondent cannot acquire any right in the suit property because for a relinquishee to acquire a right in the property covered by a relinquishment deed, he should have some right or semblance of right therein and since 1st respondent did not acquire any right in the Stridhana property of his mother, by virtue of Ex.A-6, he cannot acquire any right in any part of the suit property and so by virtue of Ex. A-7 sale deed executed by the 1st respondent in favour of 2nd respondent in respect of B-Schedule property 2nd respondent did not acquire any right therein. The contention of the learned Counsel for 2nd respondent is that the mother of appellant died after the coming into force of Hindu Succession Act and so both appellant and 1st respondent became entitled to her properties. It is his contention that under Ex. A-5 sale deed the mother of appellant purchased several properties including the suit property and if really the mother of appellant died prior to the coming into force of Hindu Succession Act, appellant would have inherited all the properties covered by Ex.A-5 to the exclusion of 1st respondent, so appellant would have claimed right in the landed property purchased under Ex.A-5 also and the fact that the appellant is not claiming a share in the lands purchased by the mother under Ex.A-5, which are in possession and enjoyment of 1st respondent, clearly shows that this suit is filed with a view to cause wrongful loss to 2nd respondent and contended that since the appellant, except baldly alleging that Ex.A-6 is vitiated by fraud, did not adduce any evidence to show how the fraud was played on her, she is not entitled to any relief, more so because the suit is filed beyond three years from the date of Ex.A6.

5. Except baldly alleging in the plaint that she being a lady not well-versed in affairs 1st respondent by playing fraud obtained her signature on Ex.A-6 [the

date of Ex.A-6 is wrongly typed as 18-6-1980 instead of 18-7-1980] details of fraud are not stated by the appellant. The Supreme Court in Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, , held:

"In cases of. fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Court ought to take notice however strong the language in which they are couched may be",

Therefore unless appellant gives full particulars of the fraud allegedly played on her and adduces evidence in support of the allegations made in the plaint without any departure from the pleas taken in the plaint, appellant cannot succeed on the plea of fraud. Since, appellant did not give any particulars relating to fraud in her plaint, and since no amount of evidence can be looked into on a plea and particulars not stated in the plaint, it cannot but be said that appellant failed to establish that Ex, A-6 was obtained by playing fraud on her.

6. Appellant as PW-1 admitted that 1st respondent took her to the Sub-Registrar's office and that she signed Ex.A-6 at the Office of the Sub-Registrar, Srikakulam. Her evidence that she did not observe if the attestors affixed their signature to Ex.A-6 after she signed thereon, and that the registering officer did not enquire her if she executed Ex.A-6 and received consideration, and that she did not subscribe her signature and thumb impression before the registering authority cannot be believed or accepted because the recitals Ex.A-6 show that the appellant, after receiving a consideration of Rs. 6,000/- relinquished her right in the suit property in favour of the 1st respondent. The endorsements on Ex.A-6 show that the said document was presented in the office of the Sub-Registrar, Srikakulam, between 12.00 noon and 1 p.m. on 18-7-1980 [the date of its execution] and that the appellant who was identified by Sri P. Nagaraju, son of Suryanarayana and Tarlada Sri Ramnaidu, son of Raja Rao, admitted its execution. Section 34 of the Registration Act, 1908 contemplates the Registering Authority being satisfied with the identity of the executant of the document presented for registration, and the executant admitting its execution before him ordering registration of a document presented for registration. In view of Section 34 of Registration Act, it has to be taken that the Sub-Registrar followed the procedure prescribed by the Registration Act for registering Ex.A-6 in view of the presumption available u/s 114 of Evidence Act that official acts are duly performed. If it is the case of the appellant that the procedure prescribed in Section 34 of the Registration Act was not complied with by the Sub-Registrar at the time of registration of Ex.A-6 she should have specially alleged that fact in the plaint. Since, the appellant did not even allege in the plaint that she did not go to the Office of the Sub-Registrar and present Ex.A-6 for registration and that the Sub-Registrar did not follow the procedure prescribed by the Registration Act for registering Ex.A-6 or that there were irregularity in registering Ex.A-6, merely on the basis of the interested evidence of PW-1, without anything more, it cannot

be said that the Sub-Registrar did not follow the procedure prescribed by the Registration Act for registering Ex.A-6. Since the appellant went to the Sub-Registrar's office to get Ex.A- 6 registered, even if she was not aware of the contents of Ex.A6 which was executed and presented by her for registration as alleged by her or if she entertained a doubt about the contents therein, she could have obtained an extract of Ex.A-6 from the Sub-Registrar's Office, and could have gone through the contents therein and could have taken appropriate action for setting aside Ex.A-6 within three years from 18-7-1980 i.e., the date of registration of Ex.A-6 as required by Article 58 or Article 59 of the Limitation Act, 1963, because cause of action to set aside Ex.A-6 should be deemed to have accrued to the appellant on the date of its registration. Since, this suit is filed beyond three years from the date of registration of Ex-6 it is clearly barred by time, and for that reason alone, the suit is liable to be dismissed.

7. I find force in the contention of the learned Counsel for the 2nd respondent that the suit must have been got filed by the 1st respondent in the name of the appellant, because Ex.A-5 shows that apart from the suit property, the mother of the appellant and the 1st respondent purchased Ac.2.87 cents in Sy.No. 241, Ac.2.19 cents in Sy.No. 272, and Ac.0.96 cents in Sy.No. 274, and Ex.B-15 shows that as long back as on 16.2.1976, 1st respondent alone, for himself, and on behalf of his minor son, mortgaged the land of Ac.2.87 cents in Sy.No. 241 to the Co-operative Land Mortgage Bank, Srikakulam, and obtained a loan. 1st respondent under Ex.A-1, mortgaged the suit property to DW-I on 25.8.1968, on 15-9-1970 under Ex.B-2 and yet again on 12-2-1981 in favour of the 2nd respondent under Ex.B-3. Earlier to Ex.B-3, on 20-7-1974, the 1st respondent mortgaged the suit property to Varahamma, wife of Narasimhudu, for Rs. 4,000/-. When the 1 st respondent has been dealing with the suit property in his own right from the year 1968 onwards, and was mortgaging the same and was obtaining loans on its security, if really he has no interest therein, appellant would not have kept quiet this long and would have questioned the actions of the 1 st respondent within a reasonable time from 1968, but she filed the suit only in 1984 i.e., 16 years from Ex.B-1 and about four years after Ex.B-1. In the above circumstances, and since appellant failed to adduce evidence regarding the date of death of her mother, it has to be presumed that both appellant and 1st respondent inherited the property of their mother and so the contention of the learned Counsel for the appellant that 1 st respondent cannot acquire any right of the suit property, by virtue of Ex.A-1 cannot be accepted.

8. CMP No. 18310 of 2001: This petition is filed by the appellant to receive certain documents i.e., some photographs, wedding card, ration card and voters list as additional evidence in the appeal. The documents sought to be introduced as additional evidence have no relevance for a decision in the suit because most of them came into existence after the filing of the suit. It is well known that documents that came into existence after the filing of the suit cannot be relied on for deciding the point for consideration in the appeal. One of the documents sought to be introduced as additional evidence is the affidavit of Sri C. Venkala

Rao, a living person. In view of Section 33 of Evidence Act, affidavit of a living person cannot be received in evidence. None of the documents filed with this petitions are relevant to decide the date of death of the mother of the appellant and 1st respondent. Significantly, wedding invitation card said to have been printed in connection with wedding of the appellant is in black ink. Court can take judicial note of the fact that wedding Invitations would not be printed in black ink. Obviously the said invitation is sought to be introduced as additional evidence in an attempt to show that by 15-4-1955, the alleged date of marriage of the appellant, her mother passed away. As stated earlier, since invitation is printed in black ink its genuineness is doubtful. The date of marriage of the appellant is not mentioned in the plaint. The reasons for not producing the said invitation in the trial Court are not mentioned in the affidavit filed in support of the application. Though the suit was disposed of in 1987, this petition is filed in 2001 i.e., about 14 years after the disposal of the suit and about 17 years after the institution of the suit. So I find no ground to allow the petition for adducing evidence. Hence, the same is dismissed.

9. Since Ex.A6 shows that the appellant received Rs. 6,000/- in consideration of her relinquishing her share in the suit property and since the evidence on record does not establish that any fraud was played by the 1 st respondent at the time of execution of Ex.A6, I hold that the appellant is not entitled to a declaration that Ex.A6 is vitiated by fraud. The point is answered accordingly.

10. Therefore, I do not find any merits in this appeal and hence the appeal is dismissed. No order as to costs.