
(1987) 09 AP CK 0012
In the Andhra Pradesh High Court
Case No : Appeal No. 108 of 1981

Pulibandla Venkata Subbanna and Others	APPELLANT
Vs	
Devasani Chinna Panayya and Another	RESPONDENT

Date of Decision : 22-09-1987

Acts Referred:

Specific Relief Act, 1963 — Section 33
Transfer of Property Act, 1882 — Section 13, 14, 16, 20

Citation : AIR 1989 AP 34

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : R.V. Subba Rao, for the Appellant; J. Eswara Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellants, are defendants 2, 10, 11 and 13 to 16. Defendants 10 to 14 are the legal representatives of the 1st defendant. The respondents are the son and daughter of one Pannaiah. They filed a suit for declaration that they are the reversioners of one Bodemma alias Panamma for possession of their property. In this appeal we are concerned with regard to items, 1, 4, 5 and part of 1/4th share in item 6. The 2nd defendant is claiming items 1 and 4 and defendants 10 to 14, the legal representatives of the 1st defendant, are claiming item 5 and part of 1/4th share in item 6. The trial court granted a decree for possession and mesne profits in respect of these items with proportionate costs, and to enquire into mesne profits from 22-7-1975 by a separate application. Assailing the legality thereof, the appeal has been filed.

2. The suit has got a checkered career and therefore it is necessary to give in detail the salient factors. The property originally belonged to Bodemma alias Panamma. aunt of the father of respondents viz. Pannaiah. She bequeathed these properties under the will dt. Nov. 25, 1944 to his father Pannaiah, Pannaiah was addicted to vices and started squandering the properties.

Therefore, elders including P.W. 2 have effected a settlement under which Pannaiah executed a settlement deed, Ex.A-1 dt. Feb. 16, 1948 whereunder he reserved life estate for himself and his wife and vested remainder to the children to be born to them. The other details are not necessary for the purpose of this case. But, during their life-time ""they alienated the properties. the relevant items under Ex. A-4 dt. Feb. 27, 1950. item 5 to the 1st defendant, on the even date under Ex.A-5 in respect of items 1 to 4 and 6 to the father of the 2nd defendant and gave possession to them. Subsequently the 1st appellant was born on Nov. 2, 1951 and the 2nd appellant in the year, 1954. At a partition between the 2nd defendant and his brothers items 1 to 4 fell to himself and one Venkataswamy who sold item 6 to defendants 1, 3 and 4 and one Nadipi Hussain under Exs. A-7 to A-10. The 1st defendant also purchased a portion of item 6 under Ex.A-15 dt. July 26, 1967 from Nadipi Hussain. Venkataswamy and his wife sold under Ex.A-14 dt. Mar. 2. 1962 item 2 to the 5th defendant. The 2nd defendant sold item 3 to the 6th defendant under Ex. A-13 dt. Feb. 28, 1962. Equally the 1st defendant sold Ac. O-16 cents to defendants 7 and 8 in item 3 under Exs. A-11 and A-12, dt. May 22, 1961. But, the Plaintiffs got issued the suit notice Ex. A-17 dt. Nov. 19, 1968 claiming for possession of the properties to which defendants 1, 3 and 4 and Venkataswamy refused notice and others issued notice denying the setting up of title. Thus the respondents came to file the suit. The plea of the 1st defendant of whom defendants 10 to 14 are the legal representatives is that Pannaiah was addicted to bad habits and therefore he needed money, he alienated the properties to them for valid consideration, they are the bona fide purchasers without notice of the restricted rights. Ex.A-1 is a false document brought into existence to defeat their claims. They are the holders of the property and therefore the alienations cannot be set at naught. Others have followed the defence taken. The trial court on framing three issues and adduction of evidence by judgment dt. Dec. 16, 1971 considered the same and decreed the suit and on appeal in AS 34/74 additional written statements were filed by defendants 2, 5, 10, 11 and 13 on the demise of the 1st defendant. It is their case that Bodemma died as a result they filed 1A No. 190/75 to grant the relief of possession. That IA was allowed. Against that CRP No. 84 of 1976 was filed in this Court and this court allowed the CRP on the ground that the appellate court cannot order amendment with a view to enhance its pecuniary jurisdiction, accordingly it set aside the order and remanded the matter to the appellate court and the appellate court by its judgment dt. June 25, 1977 allowed the application and remanded the matter to trial court to dispose of it on merits. Then a memo was filed by the counsel of both sides. In the meanwhile since the 1st defendant died, his legal representatives filed an additional written statement contending that under Exs. X-1 and X-2 the properties covered by items 1 and 5 have changed hands to other parties and for proof thereof U.Ws. 1 to 3 and 7 were examined in respect of Ex.X-1 and P.Ws. 4, 5 and 8 were examined on behalf of the respondents and in respect of item 5 in proof of. Exs. X-2 defendants 4 to 6, 8 and 9 "were examined. The court below considered the entire evidence and held that in view of the findings recorded on issues I to 3, it

confirmed those findings and with regard to additional issue viz., the properties said to have been conveyed, under Exs.X-1 and X-2 in respect of items 1 and 5 the court below found that they have not been in fact gone out of control of defendants, they are only transactions made for purpose of defeating the claims. On that basis decreed the suit once over. Hence this appeal.

3. Mr. R. V. Subba Rao, learned counsel for the appellants contended that the approach of the court below is vitiated by several irregularities on questions of fact. His first attack is that Ex. A-I itself is void for the reason that the vested remainder cannot be created in perpetuity and therefore it offends Section 13 of the T.P. Act(Act 4 of 1882) (for short "the Act") It is next contended that even assuming that it is not in perpetuity since the respondents were not born at the time when Ex. A-I was created it does not create any right in them. Therefore, they cannot seek recovery of possession on the basis thereof. Thirdly it is contended that the properties have been purchased by the predecessors of the appellants bona fide and they effected improvements thereof and therefore the respondents cannot seek possession from them. Even otherwise the property has gone out of their hands under Ex.X-1 and X-2 and therefore they cannot be made liable for the mesne profits. The first question therefore is, whether Ex.A-1 is void as contended. If this issue, is answered in favour of the appellants, the need to go into further questions does not arise. Section 13 of the Act mentions that "where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property." In this case, indisputably the entire interest acquired by Pannaiah under the will executed by his aunt on Nov. 25, 1944 has been the subject of settlement deed under Ex. A-I dated Feb. 16, 1948. Section 14 of the Act provides rule against perpetuity, thus: "No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more, persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong". This is to be read in conjunction with Sections 16 and 20 of the Act. Section 16 provides transfer to take effect on failure of prior interest, thus "Where, by reason of any of the rules contained in Sections 13, and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intendend to take effect after or upon failure of such prior interest also fails. "But Section 20 provides that "where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appears from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth." Thus it is clear that an interest created for the benefit of an unborn person fails as soon as that person is born. It means that he is not entitled to the

possession during the life of his parents. Take for instance if A settles property for their joint life, then a son is born, the son takes vested interest since he is born and he gets vested remainder only on the demise of the parents. It is true that the vested remainder cannot be created in perpetuity as engrafted in Section 13 of the Act. But, when both wife and husband are living and they intend to have the benefit of the property for their life and vested remainder to their unborn children, there is nothing illegal to give the vested remainder to their unborn children creating life interest in themselves. This life estate created in favour of the wife, the better half of the husband, is entitled to enjoy for life along with husband and on his demise for her residue period. Thus there created an interest in them to appropriate in present of its usufruct for personal benefit. So it cannot be said that the life estate created in favour of the wife offends the principle of perpetuity. Accordingly I do not find any justification in the contention of the learned counsel for the appellants that it offends the rule of perpetuity as incorporated u/s 14 of the Act. Accordingly, I hold that Ex.A-1 dt. Feb. 16, 1948 is a valid document.

4. The next question, therefore, is whether the parents Pannaiah and his wife are entitled to alienate the properties to the appellants' predecessor-in-interest. Admittedly, under Ex.A-1 they had life estate. Therefore, what all they can alienate is their life estate which is permissible under law but not the absolute right and title in the property. Under the sale deeds produced by the predecessors-in-title indisputably what they purchased is right, title and interest in the properties but not life estate. Therefore, the sale is void and it is not binding on the respondents. No doubt. P.W. 1. one of the attestors of Ex.A-1 has stated that he was in a drunken condition when Ex.A-1 was executed. The Court below has held that he is an accommodating witness and therefore much credence cannot be given to the evidence of P.W. 1. It would appear that since the appellants have acquired title to the property under Ex.A-1, since the evidence is detrimental to the interests of the respondents, the Court below has rightly not placed reliance on that evidence. It is next contended that P.W. 2 one of the persons who effected Ex.A-1 who is responsible for executing Ex.A-1 admitted that alienations made, perhaps, may be for necessity, but once it is found that they have no title to alienate the property, the purchaser cannot acquire any better title than what their vendors have. Accordingly they cannot acquire any title. Therefore the sale made in their favour is not binding on the respondents.

5. The next contention that the properties have been alienated by the defendants under Ex.X-1 and X-2 and therefore they cannot be made liable for the mesne profits. This contention cannot be given countenance. With regard to Ex.X-1 relating to item 1. P.Ws. 4, 5 and 8 were examined on behalf of the respondents and D. Ws. 1 to 3 and 7 were examined on behalf of the appellants and in respect of item 5 under Ex.X-2, P.Ws. 6 to 8 were examined on behalf of the respondents and D.Ws. 4 to 6, 8 and 9 were examined on behalf of the appellants. This evidence was considered by the court below in extenso and I do

not propose to deal with the evidence afresh for the reason that the court below has extensively considered the evidence and no new points have been urged during the course of the arguments for consideration. The Court below considered the entire evidence and have given cogent and valid reasons. I have given my due anxious consideration. I entirely agree with the Lower Court. Accordingly, I affirm the reasons and conclusions and hold that items 1 and 5 covered by Exs.X-1 and X-2 respectively did not pass out from the hands of the appellants. Accordingly they are only self-serving documents and therefore the finding given by the Court below that they are liable for mesne profits need not be interfered with.

6. It is next contended, relying upon Section 33 of the Specific Relief Act (Act 47 of 1963) that once it is found that the appellants are bona fide purchasers for value and they effected improvements, they are entitled to equities as engrafted u/s 33 of the Specific Relief Act. It is true that he who comes to the Court must come with clean hands. In this case, the respondents at no point of time are to be blamed. With regard to the equities which the appellants seek for they have been in possession and enjoyment of the property ever since the date of purchase i.e., 1950 onwards being enjoying the properties, the enjoyment can be set off till the date of suit viz., July 2, 1975, the date on which the mesne profits will be set off seeking for payment of purchase money. The decision relied on by Sri Subba Rao, reported in *Vemana Venkama Naidu and Others Vs. Sayed Vilijan Chisty and Others*, does not help the appellants for the reason that there the sale was made for the benefit of minors. The minors subsequently filed a suit for possession of the property. The sale was set aside on the ground that it was not binding on the minor. Under those circumstances, Viswanatha Sastry. J. speaking for the Division Bench has held that equities are to be worked out by paying compensation adequately to the purchasers. But, in this case, since the sale is not for the benefit of minors, the ratio therein cannot be applied.

Therefore I do not find any compelling reasons warranting interference in the appeal and the appeal is therefore dismissed, but in the circumstances each party to bear its own costs.