
(2005) 03 AP CK 0061
In the Andhra Pradesh High Court
Case No : SA No. 1372 of 2004

Rajoji and Another

APPELLANT

Vs

Patnam Hanmanth Reddy and Others

RESPONDENT

Date of Decision : 07-03-2005

Acts Referred:

Registration Act, 1908 — Section 47
Specific Relief Act, 1963 — Section 34, 5
Transfer of Property Act, 1882 — Section 54

Citation : (2005) 3 ALD 23

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Mahipathi Rao, for the Appellant; T. Muralidhar Rao, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This second appeal arises out of the concurrent judgments passed in A.S. No. 32 of 1992 on the file of the learned District Judge, Mahboobnagar and O.S. No. 51 of 1985 on the file of the learned Junior Civil Judge, Shadnagar.

2. The plaintiffs in the suit are the appellants herein. According to them, they purchased an extent of Ac.0.20 guntas each, partly in Survey No. 323/A and partly in Survey No. 326/A of Pomalpally Village, Shadnagar Taluk, through sale deeds, dated 7-9-1977 (Exs.A1 and A2). They pleaded that an unregistered sale deed (Ex.A.1), dated 11-5-1972, was executed by the vendor, Sri Ramji, S/o. Buddoji, before Ex.A.2 and A.3. The 1st respondent, on the other hand, pleaded that he purchased an extent of Ac.1.19 guntas in the same survey numbers from the same owner, through the sale deed, dated 14-11-1973 (Ex.B.1). The appellants filed the suit for the relief of perpetual injunction in respect of the suit schedule property. The 1st respondent, in turn, filed a counter-claim for recovery of possession of the suit schedule property. On 30-9-1992, the suit was

dismissed and the counter-claim was decreed. Aggrieved thereby, the appellants filed A.S.No. 32 of 1992 before the Court of District Judge, Mahboobnagar. The appeal was dismissed on 28-11-1992. The appellants filed S.A.No. 121 of 1995 before this Court. The second appeal was allowed, through judgment, dated 27-10-2002 and the matter was remanded to the lower appellate Court. After such remand, the lower appellate Court dismissed A.S.No. 32 of 2002 once again, through its judgment, dated 28-11-2003. Hence, this second appeal.

3. Sri K. Mahipathi Rao, learned Counsel for the appellants, submits that the Courts below committed error in not applying the principle laid down by the Supreme Court in *Hamda Ammal v. Avadiappa Pathar* 1991 A.W.R 65. He submits that though the sale deeds (Exs.A.2 and A.3) were registered on 7-9-1977, they relate back to 11-5-1972, on which date, an unregistered sale deed, Ex.A.1, was executed in their favour. He further submits that the counterclaim of the 1st respondent for recovery of possession ought not to have been entertained, in the absence of relief for declaration of title.

4. Sri T. Muralidhar Rao, learned Counsel for the 1st respondent, on the other hand, submits that the date of execution as well as registration of the sale deeds in favour of the appellants is 7-9-1977 and that the principle laid down by the Supreme Court in the case referred to above does not apply to this case. He further contends that the 1st respondent purchased the property through a registered sale deed (Ex.B.1), dated 14-11-1973 and that the sale deeds (Exs.A.2 and A.3) in favour of the appellants executed in 1977 are of no consequence. It is also his case that it is not necessary to claim the relief of declaration of title, for seeking a decree for recovery of possession.

5. Before the Trial Court, P.Ws.1 to 4 were examined and Exs.A.1 to A.27 were marked on behalf of the appellants. Prominent among the documents are, an unregistered sale deed dated 11-5-1972, marked as Ex.A.1, and two sale deeds dated 7-9-1977 executed in favour of the appellants, marked as Exs.A.2 and A.3. On behalf of the respondents, D.Ws.1 to 3 were examined and Exs.B.1 to B.5 were marked. Ex.B.1 is the sale deed, dated 14-11-1973.

6. The Trial Court framed the following issues:

"1. Whether the plaintiffs are in possession of suit schedule land?

2. Whether counter-claim of defendants for recovery of possession of suit schedule land is maintainable and if it is maintainable, whether defendant is entitled to possession of suit schedule land as prayed by the defendant?

3. Whether the defendant had purchased the suit schedule land and other lands through registered sale deed on 14-11-1973 from Ramji and Nagoji and since then in possession of the same?"

It ultimately dismissed the suit and decreed the counter-claim filed by the 1st respondent. From the submission made by the learned Counsel for the parties, two questions arise for consideration in this second appeal viz., (a) whether

Exs.A.2 and A.3 can be said to have dated back to 11-5-1972, the date on which Ex.A.1 was executed, and b) whether the counter-claim of the 1st respondent was not maintainable in the absence of any relief for declaration of title.

7. As regards the first question, the learned Counsel for the appellants placed reliance upon the judgment of the Supreme Court in *Hamda Animal's* case (supra). In that case, the Supreme Court took the view that once a sale deed is executed for consideration, all the ingredients of a sale, within the meaning of Section 54 of the Transfer of Property Act, would emerge and the requirement of registration would become relevant only when the subject-matter of the sale is an immovable property, of the value of Rs. 100/- and upwards. After referring to Section 47 of the Registration Act, their Lordships took the view that once a document is registered, it relates back to the date of execution of sale deed and the vesting of the rights in the purchaser would also relate back to such date. It is difficult to apply that principle in the instant case. The reason is that Exs.A2 and A.3 are executed and registered on the same date viz., 7.9.1977. Things would have been different, had it been a case where the unregistered sale deed, dated 11.5.1972, Ex.A.1, came to be registered on 7.9.1977. In such an event, the sale deed would have related back to 11.5.1972, though it was registered on 7.9.1977. It is not the case of the appellants that what is registered on 7.9.1977 is the same thing, which was executed on 11.5.1972. Having regard to the language employed in Ex. A1, it deserves to be treated as an agreement of sale. At the most, it was followed by two separate sale deeds viz., Exs.A.2 and A.3 on 7.9.1977. By no stretch of imagination, Exs.A.1 and A2 can be said to have been executed on 11.5.1972. Therefore, the principle laid down by the Supreme Court in *Hamda Ammal's* (supra) case does not apply to the facts of this case.

8. Coming to the second question, it needs to be observed that the relief of recovery of possession is an independent substantive right u/s 5 of the Specific Relief Act. It does not depend upon any other relief. No provision of the Specific Relief Act mandates that the relief u/s 5 cannot be claimed, except as a corollary or ancillary to a declaration u/s 34. On the other hand, it is the other way round. A relief of mere declaration cannot be claimed unless the other consequential reliefs are prayed for. Proviso to Section 34 of the Specific Relief Act makes this aspect very clear. In *Seth Srenikbhai Kasturbhai and Others etc. Vs. Seth Chandulal Kasturchand and Others*, , the Patna High Court held so (see Para 59).

9. Learned Counsel for the appellants placed reliance upon the judgment of this Court in *Balamoni Kistanna v. Narayanna Reddy* 1982 (2) ALT 408. That was a case where the plaintiff prayed for the relief of mandatory injunction simplicitor. After discussing the various judgments cited before it, this Court held that a person, whose land has been trespassed upon by another and any improvements made on it, a suit for mere mandatory injunction for removal of the structures put by the defendant cannot be maintained, unless he seeks relief of possession. The principle in that case does not apply to the facts of this case. By its very nature, the relief of mandatory injunction can be only a corollary to the relief of

perpetual injunction or recovery of possession and not an independent one. Unless the plaintiff in such a suit seeks the relief of either perpetual injunction or recovery of possession, a mere relief of mandatory injunction does not subserve any purpose.

10. The Courts below have discussed the matter with reference to the evidence on record and found that the appellants failed to establish their claim and that the 1st respondent is entitled for recovery of possession of the suit schedule property. It was open to the appellants herein to plead a superior title to disable the 1st respondent from securing the relief of recovery of possession. They failed to establish their title. It is not in dispute that by the time Exs. A1 and A.2 came to be executed on 7.9.1977, the suit schedule property was already sold in favour of the 1st respondent, through Ex.B1, dated 14.11.1973.

11. Therefore, this Court does not find any basis to interfere with the concurrent findings of the fact recorded by the Court below. Hence, the second appeal is dismissed. There shall be no order as to costs.