
(2012) 08 AP CK 0017
In the Andhra Pradesh High Court
Case No : C.M.A. No. 188 of 2012

Ramaola alias Easthar Bhagyavathi and Others	APPELLANT
Vs	
Jacob Nava Maniraja and Others	RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

Citation : (2013) 1 ALT 87

Hon'ble Judges : G. Krishna Mohan Reddy, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : T.S. Anand, for the Appellant; S.S. Bhatt, Counsel for Respondent Nos. 3 and 4, Mr. Sharad Sanghi, Counsel for Respondent Nos. 6, 7, 8 and 9 and None appeared for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

G. Krishna Mohan Reddy, J.—In this appeal, order passed in I.A. No. 249 of 2011 in O.S. No. 59 of 2011 dated 20.1.2012 on the file of the Court of I Additional District Judge, Chittoor is challenged. The appellants are the petitioners and the respondents are the respondents in the Interlocutory Application. For the sake of convenience, we refer the parties as arrayed in the interlocutory application.

2. The petitioners filed the suit for partition and separate possession of their shares in the properties scheduled therein. They also filed the Interlocutory Application to direct the respondents not to change the physical features of the schedule properties pending disposal of the suit.

3. It is claimed on behalf of the petitioners as follows.

One Yesu Dayal had three daughters by name Chandra Symon, Jane Lewis Masilamani and Yester Sarojini alias M. Sarojini and one son David Innes. Yesu Dayal. During her lifetime, she gifted 0.09 cents out of 1.48 cents in S. No. 323 and 0.20 cents out of 0.57 cents in S. No. 324/2 in favour of Chandra Symon. Subsequently she executed a Will dated 19.10.1983 bequeathing her other properties in favour of Jane Lewis Masilamani, Yester Sarojini alias M. Sarojini

and David Innes. After the death of Yesu Dayal, the beneficiaries under the Will enjoyed the properties as bequeathed therein. Jane Lewis Masilamani who was a spinster died intestate on 12.2.1999. After her death, the petitioners and the respondents 1 and 2 being the children of Chandra Symon, David Innes, father of the respondents 3 and 4 and Yester Sarojini alias M. Sarojini, 5th respondent have been in possession and enjoyment of the properties without effecting any partition among themselves. The petitioners claim that they sought for the partition of their shares in the properties, but the respondents 3 to 5 are not cooperating to effect it. According to the petitioners, each of them got 1/10th share in the properties. It is further claimed by the petitioners that the fifth respondent filed suit i.e. O.S. No. 1 of 2002 on the file of the Court of District Judge, Chittoor in respect of a portion of the properties and they also filed a petition to implead them as parties to the suit. According to them, in fact they came to know that the fifth respondent and David Innes created false sale deeds in favour of the respondents 6 to 9 which are not binding on them (petitioners). The petitioners are denying that the respondents 6 to 9 got shares in the properties.

4. The respondents 6 and 7 only contested the matter having filed counter. According to them, the suit i.e. O.S. No. 1 of 2002 was dismissed on 18.10.2011 after dragging the matter for number of years and thereafter, the fifth respondent has set up the present petition for second round of litigation. They plead that the description of the properties given in the schedule is not correct. In fact, there is no such land with Survey No. 324 measuring 2.48 cents and there is also no building in S. No. 324/2 as scheduled in the plaint, whereas building exists in S. No. 323 only. It is claimed on their behalf that Yesu Dayal had only 1.48 cents in S. No. 323 and 0.57 cents in S. No. 324/2 which was purchased by her under registered sale deed dated 30.10.1941 and that she had set apart 0.09 cents in S. No. 323 for laying road, whereas a road with a width of 15" was laid from Chittoor-Puttur main road upto the suit land. It is admitted that Yesu Dayal had conveyed 0.09 cents of land in S. No. 323 to her daughter Chandra Symon, i.e. the mother of the petitioners under a gift deed dated 25.9.1968 in consequence of which, Yesu Dayal had Ac. 1.30 cents in S. No. 323 and 0.37 cents in S. No. 324/2. It is further claimed that after the death of Jane Lewis Masilamani, the petitioners and the respondents 1 and 2 on one side and the fifth respondent and her brother David Innes on the other side got divided the entire available extent in S. Nos. 323 and 324/2 in the month of March, 1999, in which the branch of Chandra Symon were given 0.311/2 cents and another extent of 0.10 cents and the respondents 5 and 6 were given 0.89 cents in S. No. 323 and the entire remaining extent of 0.37 cents in S. No. 324/2. It is also claimed that the plots shown as 2 and 7 in the rough sketch filed were allotted to the children of Chandra Symon and the plots 1, 4 and 6 also shown therein were allotted to the shares of fifth respondent and David Innes. It is also claimed that the arrangement was acted upon and in pursuance of that, the fifth respondent and David Innes were allowed to make use of the double storied

building with Door No. 2-965 situated in the Plot No. 2 during their lifetime. It is further claimed that the fifth respondent and David Innes executed sale deeds dated 5.12.2000 and 6.12.2000 in favour of the respondents 6 to 9 in respect of 0.89 cents of land in S. No. 323 and 0.37 cents in S. No. 324/2 after executing two agreements of sale in that behalf, but in spite of that, the fifth respondent and David Innes filed O.S. No. 1 of 2002 and obtained exparte injunction in interlocutory application, but however the suit was dismissed ultimately along with the interlocutory application. It is further claimed that after purchasing the property, the respondents 6 and 7 constructed compound wall separating 0.37 cents of land purchased by them and also dug a borewell in the plot No. 1 to the knowledge of the petitioners. The respondents 6 and 7 specifically deny the claim of the petitioners. According to them, therefore the petitioners got no rights over the suit properties.

5. For the petitioners, Exs. P1 to P7 were marked and for the respondents 6 and 7, Exs. R1 to R27 were marked. On the consideration of the entire material available on record, the Court below held that Ex. R17 certified copy of registered gift deed dated 25.9.1968 would provide that Yesu Daya gifted 0.09 cents out of 1.48 cents in S. No. 323 and another extent of 0.20 cents out of 0.57 cents in S. No. 324/2 to one of her daughters Chandra Symon, mother of the petitioners, but in the plaint schedule in O.S. No. 59 of 2011 the extent of the first item therein in S. No. 324 was given as 2.48 cents and the extent of the second item therein in Sy. No. 324/2 was given as 0.17 cents with constructions therein and the extent of third item therein in Sy. No. 323 was given as 1-10 cents, which would differ with the said extents given in Ex. R17. Apart from that as per Ex. R18, authenticated copy of FMB survey report, the total extent of Sy. No. 323 was Ac. 1.04 cents and that of Sy. No. 324 was Ac. 3-05 cents, whereas the second one would not tally with the corresponding extent given in Ex. R17. Hence the petitioners failed to prove their claim. Further the respondents 6 to 9 purchased huge extents of land paying substantial amounts as consideration and accordingly they got possession and enjoyment of the properties. In addition to that the petition was filed with enormous delay. Hence the petitioners could not be granted the equitable relief of injunction and ultimately dismissed the petition.

6. Learned counsel for the petitioners contends that the respondents 6 and 7 got no right to deny the extents given in the plaint schedule and they failed to produce any evidence except Ex. R12- legal notice alleged to be issued by Sri S. Ponnaiah, Advocate on behalf of the petitioners, fifth respondent and David Innes, which was seriously disputed by the petitioners claiming that the said notice was a fabricated and collusive document. According to him, no prejudice would be caused if injunction as prayed for is granted. He claims that the lower Court failed to consider the matter properly.

7. Therefore, it is to be seen as to whether the order passed by the Court below is erroneous and the petitioners are entitled to the relief prayed for.

8. The petitioners having approached the Court, should file necessary documents

including necessary documents of possession to establish their claim prima facie. Unless they got prima facie case, they cannot be granted the relief as prayed for pending disposal of the suit.

9. Ex. P1 is the registration copy of the Will dated 19.10.1983 said to be executed by Yesu Dayal in favour of Jane Lewis Masilamani and others, Ex. P2 is the certified copy of sale deed executed by the fifth defendant and David Innes in favour of the seventh defendant, Ex. P3 is the certified copy of sale deed executed by the fifth defendant and David Innes, Ex. P4 is the registration copy of sale deed executed by the fifth defendant and David Innes in favour of the sixth defendant, Ex. P5 is the certified copy of sale deed dated 6.12.2000 executed by the fifth defendant and David Innes in favour of the eighth defendant, Ex. P6 is the certified copy of sale deed dated 6.12.2000 executed by the fifth defendant and David Innes in favour of the ninth defendant and Ex. P7 is the copy of notice with postal receipts. These documents are not suffice to uphold their claim of ownership and possession of the properties, unless there is clear evidence of the fifth respondent and her brother succeeding to the property or properties. On the other hand, as observed by the Court below as per Ex. R17- certified copy of the registered gift deed dated 25.9.1968, Yesu Dayal gifted 0.09 cents out of 1.48 cents in S. No. 323 and the other extent of 0.20 cents out of 0.57 cents in S. No. 324/2 to one of her daughters Chandra Symon, mother of the petitioners, whereas in O.S. No. 59 of 2011 the extent of the first item therein in S. No. 324 was given as 2,48 cents, the extent of the second item therein in Sy. No. 324/2 was given as 0.17 cents and the extent of third item therein in Sy. No. 323 was given as 1-10 cents, which altogether give a different picture. This has not been clarified by the petitioners. Unless the description of the properties is properly given, the relief as prayed cannot be entertained. In other words, without placing necessary documentary evidence, it is not possible to grant the interim relief sought for by the petitioners. They cannot rely on any laches on the part of the contesting respondents, if any to uphold their claim.

10. On the other hand, even though it is the claim of the respondents 6 and 7 that after the death of Jane Lewis Masilamani, the petitioners and the respondents 1 and 2 on one side and the fifth respondent and her brother David Innes on the other side got divided the entire available extents of land in S. Nos. 323 and 324/2 in the month of March, 1999 by way of oral partition and then the branch of Chandra Symon was given 0.311/2 cents and another extent of 0.10 cents and the respondents 5 and 6 were given 0.89 cents in S. No. 323 and the entire remaining extent of 0.37 cents in S. No. 324/2 and the plots shown as 2 and 7 in the rough sketch filed were allotted to the children of Chandra Symon and the plots 1, 4 and 6 also shown therein were allotted to the shares of fifth respondent and David Innes and the arrangement was acted upon and in pursuance of that, the fifth respondent and David Innes were allowed to make use of the double storied building with Door No. 2-965 situated in Plot No. 2 during their lifetime no satisfactory documentary evidence has been placed in that context. They just filed certified copy of renewal agreement of sale dated

4.12.2000, certified copies of two registered sale deeds dated 5.12.2000 and also four certified copies of registered sale deeds dated 6.12.2000 said to be executed by the fifth respondent and her brother David Innes conveying 0.89 cents in Sy. No. 323 and 0.37 cents in Sy. No. 324/2 and documents with regard to the litigation between the fifth respondent and her brother for recovering balance amount of sale consideration in O.S. No. 270 of 2002 on the file of the Court of Senior Civil Judge, Chittoor and also documents concerned in O.S. No. 1 of 2002 on the file of the Court of District Judge, Chittoor filed by the petitioners against the respondents 6 and 7 to uphold their claim. These documents in fact are not sufficient to uphold the claim of the respondents 6 and 7 that they got absolute rights in the properties claimed by them through the fifth respondent and her brother, whereas in order to uphold their claim, there should be clear evidence of the fifth respondent and her husband succeeding to the properties claimed by them (respondents 6 and 7) before executing the said sale deeds.

11. When the petitioners are burdened with establishment of their claim placing necessary evidence, but they have failed to do so, their claim cannot be upheld. There is absolutely no reasons to interfere with the ultimate findings given by the Court below. In the result, the appeal is dismissed. There shall be no order as to costs.