

(1964) 03 AP CK 0006

In the Andhra Pradesh High Court

Case No : Second appeal No. 906 of 1960

Srirangam Venkataratnam and Others

APPELLANT

Vs

Perambadur Bullemma and Another

RESPONDENT

Date of Decision : 09-03-1964

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 1965 AP 163

Hon'ble Judges : Basi Reddy, J

Bench : Single Bench

Advocate : S. Ramamurthy, for the Appellant; K. Ramachandra Rao and K. Venkateswararao, for the Respondent

Judgement

(1) This is an unfortunate litigation between close relatives and has been fought out at all stages with a zeal and tenacity worthy of a better cause. In particular, this Second Appeal by the plaintiffs is directed against the decree of the lower appellate court which, in my opinion, is manifestly equitable and just. A bare outline of the rival cases and a pointed reference court and the actual terms of the decree passed by it, will show how utterly devoid of merits this Second Appeal is. The dispute relates to a small house constructed over an area of about twenty square feet. Although the 1st plaintiff (who gave evidence as P. W. 3) went to the length of denying even the relationship between her and the 1st defendant (who gave evidence as D. W. 6), in truth the 1st plaintiff is no other than the sister of the 1st defendant's mother. The plaintiffs 2 to 5 are the sons of the 1st plaintiff and the 2nd defendant is the husband of the 1st defendant. The 1st plaintiff's husband was one Lakshmi Narasinga Rao (who will be referred to for the sake of brevity as "Rao") and he died somewhere in the year 1952. This suit was brought by the 1st plaintiff in the year 1957 for possession of the plaint B schedule property which consists of the site referred to above and the superstructure, and for other ancillary reliefs.

(2) The case of the 1st plaintiff was that her husband, Rao was the owner of the

suit house which formed part of the main house and the site also belonged to him. The suit house was constructed by Rao on the site belonging to him and the house consisted of a tiled shed with one room, verandah and a latrine. By a will dated 22-6-1950 (Ex. B. 1) Rao bequeathed his properties which included the suit house and the site, to the 1st plaintiff. The 1st defendant, who site, to the 1st plaintiff . The 1st defendant, who according to the 1st plaintiff is an utter stranger and not even related to her, took the B schedule house on lease in the beginning of 1952 on a monthly rent of Rs. 5/-, paid rent for a few months and then defaulted, and therefore the suit was instituted for recovery of possession of the house and for profits.

(3) The 1st defendant's case on the other hand was that the 1st plaintiff is no other than her mother's sister ; that the 1st plaintiff and her husband the late Rao had brought her up and that Rao had told her to build a small house for herself in the vacant site at the northwestern corner of the main building in which he and his family were residing ; that he had told her that the site belonged to the family of some goldsmiths which had become extinct ; that Rao had not only encouraged her to build the house but had actively assisted her by obtaining a licence from the Municipality for the construction of the house ; that she (the 1st defendant) got the house constructed at a cost of Rs. 600/- and performed "Gruhapravesam" sometime towards the end of 1950, and the function was attended by Rao and his wife, the 1st plaintiff, as also by several friends and relations of both the parties, as also D. Ws. 3 and 4 ; that Rao had acknowledged the right of the 1st defendant to the site in the presence of several persons and she had come to regard the site as a gift made by Rao, and that on account of certain misunderstandings between herself and the 1st plaintiff after the death of Rao, the present suit had been instituted by the 1st plaintiff .

(4) In the written statement it was further averred :

"Thus the 1st defendant has been in exclusive possession and enjoyment of the B schedule building in her own right exercising acts of ownership to the knowledge of plaintiff and her husband who never questioned the same and are "estopped" from questioning the same both by their acquiescence and conduct."

(I have underlined (here into " ") the word "estopped" in view of the crucial question that falls for determination in this Second Appeal). The 1st defendant further denied that the suit house had been leased out by the 1st plaintiff or her husband and averred that in the mortgage which the plaintiff had executed on 21-5-1954 (Ex. B. 2) in favour of one Voruganti Suryakanthamma, the suit house had not been included.

(5) At the trial, oral and documentary evidence was adduced by both sides to substantiate their rival cases. The learned District Munsif, on a consideration of the entire evidence, found that the suit site belonged to Rao, that the gift of the site to the 1st defendant by Rao was not proved, that the house was not constructed by Rao and that it was in fact constructed by the 1st defendant at

her own cost. The learned District Munsif found in paragraph 15 of his judgment :

"Thus from the evidence of D. Ws. 1 to 5 it is clear that the first defendant constructed the suit house at her own cost and that she is living in the suit house from 1950."

Again in paragraph 16, the learned Munsif says :

"From the overwhelming oral and documentary evidence I am satisfied that the house was constructed by the 1st defendant. Though P. W. 3 denies any relationship with the 1st defendant, it is in evidence of P. Ws. 3 to 5 that the 1st defendant is no other than the sister's daughter of P. W. 3. On account of love and affection the suit site must have been given to the defendants and the defendants constructed the suit house. One strong circumstance is against the plaintiffs. If really the house was constructed by them, there is no reason why they did not pay municipal tax for the suit house. They did not move their little finger either to pay or to object the municipality for assessing separately in the name of the 1st defendant ."

As regards the alleged lease set up by the 1st plaintiff in favour of the 1st defendant, the District Munsif had no hesitation in characterising the evidence adduced by the plaintiffs as false, and found that the late Rao had title to and possession of the plaint B schedule site prior to 1950, and the superstructure was raised by the 1st defendant.

(6) Having recorded the above findings, the District Munsif felt that he was unable to give any relief to the defendants and proceeded to observe as follows :

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"Though the plaintiffs have no possession to the suit site subsequent to 1950, they are entitled for the possession of the same. The defendants constructed the house knowing that it belonged to late Narasingarao. It may be a fact that defendants 1 and 2 were permitted both by the Narasingarao and P. W. 3 to construct the suit house. No relief u/s 51 of the Transfer of Property Act is claimed. It may be a fact that defendants must have spent Rs. 800/- for the construction of the house. In the absence of any specific plea u/s 51 of the Transfer of Property Act, I am of the opinion that no relief can be granted to the defendants."

On the question whether the plaintiffs were entitled to any damages the learned Munsif observed :

"The defendants are not the tenants of the plaintiffs. They constructed the house at their own cost and they are entitled for the superstructure. On account of close relationship, P. W. 3 and her husband should have permitted the defendants to construct the house. The plaintiffs are not entitled to any damages."

(7) In the result, however, the learned District Munsif decreed the suit for possession of the B schedule vacant site. The defendants were directed to

remove the superstructure within one year, failing which the plaintiffs were given the option to execute the decree.

(8) Aggrieved by the decision of the District Munsif, the defendants went up in appeal and the appeal, A. S. No. 205 of 1958 along with Cross-objections filed by the plaintiffs for the recovery of the suit house and for profits, was heard by the Additional District Judge, Visakhapatnam.

(9) The learned Judge framed the following points for determination :

(1) Whether the site belonged to Narasingarao as is alleged by the plaintiffs ?

(2) Whether the gift of the said site as is alleged by the defendants is true and valid ?

(3) Whether the lease alleged by the plaintiff is true ?

(4) Who has built the superstructure found on the said site now ?

(5) Whether the plaintiffs are entitled to any damages ?

(6) What are the equities, if any, to which the parties are entitled ?

The learned appellate Judge considered the evidence pro and contra bearing on these points and recorded the following findings :

(1) that the site belonged to Rao ;

(2) that the alleged gift of the site by Rao to the 1st defendant had not been established and even otherwise, the gift not having been evidenced by a registered document, is not valid ;

(3) that the alleged lease set up the plaintiffs was not true ;

(4) that the plaint B schedule house was constructed by the 1st defendant at her own cost, and

(5) that the plaintiffs were not entitled to any damages.

On the question of equities arising in the case, the following findings recorded by the lower appellate court are worthy of note :

"(a) Thus, on the evidence before me, I have to hold that the suit site belonged to Narasinga Rao, and that he permitted his wife's sister's daughter, the 1st defendant , believing that she was entitled to that property, constructed the house and began to enjoy it afterwards. Narasinga Rao and his wife and children did not object at any time to the user. After the death of Narasinga Rao and after the expiry of some years, disputes arose between the 1st plaintiff and the 1st defendant. The 1st plaintiff demanded possession of the house. She even denied her relationship with the 1st defendant. But she knows that her husband has not claimed title to the site after it was given to the 1st defendant. As she wanted to deny the gift, the 1st plaintiff went even to the extent of denying her relationship

with the 1st defendant. She stated that her husband constructed the superstructure. But the evidence shows that her case is not true."

"(b) Thus the position resolves to this : Narasinga Rao was the owner of the site. He permitted the 1st defendant in or about the year 1950 to build a house on it and to occupy it. He did not claim any title to the site thereafter. He died after executing a will but without dealing with that property. His wife and children, who are the plaintiffs, never intended to claim title to that property till the year 1955. They and Narasinga Rao allowed the 1st defendant to construct a house and to enjoy it. In the year 1955 the 1st plaintiff thought of asserting title to that property. She asserted title and set up a lease which is false."

Then the operative portion of the judgment of the lower appellate court reads thus :

"But , as the 1st defendant has not secured title to the site in question, it must be held that the site belongs to the plaintiffs. But the defendants are the owners of the superstructure. Further, the plaintiffs having allowed the defendants to treat the site also as their own, the plaintiffs have no moral claim to that property. The 1st defendant was led to believe that she was the owner of the site

Hence, I confirm the judgment of the lower Court regarding the findings on the title to the property and also about the claim for damages. As I have stated above, the 1st defendant is given the right to pay to the plaintiffs the value of the site as in the year 1950. which has to be determined by the issue of a commission by the executing court in execution, and the interest thereon at 6 per cent per annum from 1-1-1951 to the date of payment. If the 1st defendant does not pay this amount within a reasonable time, which will be fixed by the executing court, the executing court will send out a Commissioner to assess the value of the building erected by the 1st defendant and permit the plaintiffs to deposit the value of the house so ascertained, to be paid over to the 1st defendant within a time to be fixed by it and recover possession thereafter of the entire property from the defendants/ With this modification, the appeal and the cross-objections are dismissed. The parties will bear their own costs in this appeal and the cross-objections."

(10) Although the learned appellate Judge did not in terms say under what provision of law he was making the decree, it is obvious that he was having the rule of estoppel enacted by S. 115 of the Evidence Act in mind. It could not possibly be a case of the application of S. 51 of the Transfer of Property Act, because on the findings recorded by the courts below, no question of the applicability of that section could arise.

(11) Now, Section 115 of the Evidence Act occurs in the Chapter bearing the title "Estoppel" and reads thus :

"When one person has, by his declaration, act or omission intentionally caused or

permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title."

(12) In the present case the lower appellate court, agreeing with the trial court, has found that the suit site belonged to Rao, that the superstructure had been erected by the 1st defendant at her own cost, that Rao had not only encouraged the 1st defendant to build the house but had actively helped her by applying and getting a licence from the Municipality, that Rao and his wife had attended the "gruhapravesam" ceremony and that thereafter Rao had not laid any claim to the house or the site, and that two or three years after his death, his widow, the 1st plaintiff had come forward with the present suit with false allegations. The lower appellate court has found that this was not a case of Rao making a gift of the property to the 1st defendant but that it was a case where, by his acts and omissions, Rao had induced a belief in the 1st defendant that she could treat the site as her own. The lower appellate court says in paragraph 16 of its judgment that the 1st defendant was led to believe that she was the owner of the site. In point of fact it appears from the evidence of D. Ws. 3 and 4, who are related to both the parties and who had attended the "gruhapravesam" ceremony, that the 1st plaintiff's husband had told them that he had asked the 1st defendant to construct a house on the site. Upon these facts, I am clearly of opinion that the acting's and conduct of Rao created an estoppel against him or anyone claiming under him from disputing the right of the 1st defendant to the site in question.

(13) As was pointed out by the Privy Council. In *Sarat Chunder Dev v. Gopal Chunder Laha*, ILR Cal 296 (PC), the law enacted in S. 115 of the Evidence Act, relating to estoppel as a consequence of declaration, act or omission causing another's belief and action thereon, does not differ from the English law on that subject. The main question, in determining whether estoppel has been occasioned, is whether the representation has caused the person to whom it has been made to act on the faith of it. The existence of estoppel does not depend on the motive or on the knowledge of the matter, on the part of the person making the representation. It is not essential that the intention of the person whose declaration, act or omission has induced another to act, or to abstain from acting, should have been fraudulent or that he should not have been under a mistake, or misapprehension. Thus the real question is whether the representation has caused the person to whom it has been made, to act on the

faith of it. The word "representation" covers declaration, act or omissions, which may be express or implied and may be made in any form. That being the scope and effect of Section 115 of the Evidence Act, I have no hesitation in holding that on the findings recorded in this case, the plaintiffs are estopped from questioning the right of the 1st defendant to the suit site and from seeking to evict her. Not merely had Rao and the 1st plaintiff stood by but Rao had actively encouraged and had even assisted the 1st defendant in constructing the house. In this situation the present case falls fairly and squarely within the ambit of Section 115 of the Evidence Act.

(14) Learned advocate for the appellants has, however, relied on the Privy Council ruling in AIR 1931 79 (Privy Council) as negating the application of the rule of estoppel to the facts similar to the facts found in this case. A careful reading of the judgment of the Judicial Committee, however, shows that the facts in that case were wholly dissimilar to the facts found here. Indeed the observations of their Lordships in the course of their judgment do not in the least support the learned advocate's contention. The facts in that case were as follows : In 1913, Ariff (the appellant), having verbally agreed with Majumdar (the respondent) to grant him a permanent lease of a plot of land at Rs. 80/- per month, let him into possession. Shortly afterwards, the respondent, with the knowledge and approval of the appellant, erected structures on the land at a cost of over Rs. 10,000/- In December 1918, the appellant definitely refused to grant the respondent the agreed lease, and, in 1923 sued to eject him after a month's notice to quit. Under the Indian Limitation Act, 1908, Schedule 1, Art. 113, the respondent's right to sue for specific performance of the verbal agreement was barred in December 1921.

On those facts, their Lordships held that there being no lease made by a registered document, as required by Section 107 of the Transfer of Property Act, 1882, the appellant was entitled to eject the respondent, with liberty to him to apply to remove the structures ; had the respondent's right to sue for specific performance not been barred, he could have registered. Their Lordships then went on to say that the English doctrine of equitable estoppel did not arise in the case because the only contract to which the erection of the structures could be referred, had since ceased to be enforceable and there was no representation of fact giving rise to an estoppel by Sec. 115 of the Evidence Act. In the course of the judgment, their Lordships drew pointed attention to the fact that the right of the respondent depended on a verbal agreement for the grant of a perpetual lease. There was no representation by the appellant as would give rise to a plea of estoppel.

At page 1243 of the report, (of ILR Cal) : (at p. 81 of AIR), their Lordships observed :

"This is no case of money being expended by the respondent in any mistaken belief as to his legal rights, or of the appellant knowing of the existence of any such mistaken belief, or encouraging the respondent by abstaining from asserting

a right inconsistent with the acts of the respondent. Observe the true facts. IN 1913, the respondent obtained a verbal agreement for the grant of a perpetual lease, under which agreement he could have sued for and obtained and registered an instrument creating his title to enjoy the property in perpetuity. That agreement continued to be enforceable against the appellant until the month of December 1921. The structures were erected on the land many years before that date, and they were erected not in any mistaken belief by the respondent of his rights in regard to the land, but in assertion of rights which he correctly believed to be his, not by reason of any encouragement or abstention on the part of the appellant, but by reason of the agreement which he was then entitled to enforce against the appellant."

(15) At p. 1246 (of ILR Cal) : (at pp. 82-83 of AIR) their Lordships referred to the well known dictum of Lord Kingsdown in Ramsden v. Dyson (1866) 1 HL 129 at pp. 170, 171 :

"If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the landlord, to give effect to such promise or expectation."

Their Lordships proceeded to observe with reference to the above passage, thus :

"Even if Lord Kingsdown's language was intended to cover something beyond the equitable doctrine of part performance in relation to the Statute of Frauds, and was intended to refer to the circumstances in which a court of equity will enforce a title to land against the person who at law is the owner thereof, the title must, nevertheless, in their Lordships' view, be based either upon contract express or implied, or upon some statement of fact grounding an estoppel."

Then the judgment proceeds to apply the above principles to the facts of that case :

"Their Lordships have already indicated their opinion that no act was done by the respondent otherwise than under the verbal contract which was then enforceable at this suit. No circumstances exist from which any other contract by the appellant can be implied; and as to estoppel there is no trace of any statement by him upon which any estoppel can be grounded.

In truth, this case, when the true facts are appreciated, is simple enough. The acts of the respondent are all referable to a verbal contract, which was enforceable against the appellant at the time when the respondent's expenditure was incurred, and for long afterwards. Unfortunately, for the respondent, he allowed his right to enforce his contract to become barred, with the result that he can only resist the appellant's claim to possession by seeking to establish a title,

the acquisition of which is forbidden by the statute. The statute disables him from contesting the appellant's right to possession." Then their Lordships at p. 1249 of the report (of ILR Cal) (at p. 84 of AIR) concluded :

"Their Lordships cannot find that the facts of this case raise any equity in favour of the respondent. Even if any such equity was established, their Lordships are of opinion that it could not operate to nullify the provisions of the Indian Code relating to property and transfer of property."

(16) It will be seen that the reasoning of their Lordships in the above case cannot apply to the facts as found by the lower appellate court in the present case. Here there is no question of any oral contract which was enforceable by the 1st defendant . The lower appellate Court has found that the site belonged to Rao, the husband of the 1st plaintiff, and that he had, by encouragement and abstention, induced the 1st defendant to construct the house. For a considerable time thereafter, no one ever questioned the right of the 1st defendant to the suit. Subsequently, after the death of her husband, the 1st plaintiff, actuated by motives which are easily discernible, came forward with a false claim not only to the site but also to the superstructure. The conduct which would have estopped her husband from claiming the site, would equally occasion estoppel against the 1st plaintiff, as she is a representative-in-estate of her deceased husband.

(17) I am therefore clearly of opinion that in the circumstances of this case, the decree passed by the lower appellate court is proper, just and equitable. In the result, the Second Appeal fails and is dismissed with costs. (No leave).

(18) Appeal dismissed.