
(2010) 12 AP CK 0003
In the Andhra Pradesh High Court
Case No : L.P.A. No. 230 of 2000

Suraneni Lakshmi

APPELLANT

Vs

B. Venkata Durga Rao and Another

RESPONDENT

Date of Decision : 31-12-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Specific Relief Act, 1963 — Section 31, 34

Citation : (2011) 2 ALT 501 : (2012) 1 CivCC 364

Hon'ble Judges : N.R.L. Nageswara Rao, J;Goda Raghuram, J

Bench : Division Bench

Advocate : Vedula Venkataramana, for the Appellant; N. Rama Sarma, for the Respondent

Judgement

N.R.L. Nageswara Rao, J.—The wife of the deceased-first Plaintiff who is the second Plaintiff in O.S. No. 191 of 1986 on the file of the Court of Senior Civil Judge, Nuzvid, is the Appellant herein. The suit was filed by the deceased-first Plaintiff for declaration of his title to "A" and "B" schedule properties claiming that he has acquired those properties at different times from his earnings and also from the sale proceeds of the joint family lands. The allegations were made in the plaint that his second sister's daughter was married to him in 1974 and sold away his ancestral house at Borragudem in 1975 and shifted his family to Chandragudem by the end of 1975-1976; he discontinued his self-cultivation and had leased out the properties to several persons. According to the Plaintiff, apart from the leases given to others, in May 1976 the Plaintiff leased out item Nos. 6 to 8 of plaint "B" schedule properties to the second Defendant on an annual lease of Rs. 750/- for a period of two (2) years and the second Defendant continued default and surrendered the land to the Plaintiff in February-1978 and thereafter he gave the land on lease to Sri G. Sobhanadri.

2. It was further pleaded that in February-1977 he received balance of the sale consideration after the sale of the house and when Plaintiff wanted to purchase

land, the second Defendant approached him and persuaded him and therefore he lent a sum of Rs. 5,500/- and executed a promissory note in February, 1977. The promissory note was scribed by one Kummari Kunta Satyanarayana. The second Defendant therefore was in arrears of lease amount and also the pronote debt.

3. According to the case of the Plaintiff, taking advantage of his weak and gullible nature, the second Defendant and his son Venkateswara Rao took him to Vijayawada on the night of 05-04-1978 and confined him wrongfully in the house of one D. Bhadratah and at about 9.00 a.m on 06-04-1998 the Plaintiff was coerced to sign on some documents and when the Plaintiff refused, the second Defendant beat him with a stout stick, caused bleeding injury to his right knee and threatened. So the Plaintiff contributed his signatures on 07-04-1978. The Plaintiff was taken to Machiipatnam and got a document registered by coercion and threat of life in spite of objections by the Plaintiff. Again the Plaintiff was brought back to Vijayawada and confined in the house of one Bhadracharya by the acts of coercion and threat and on 29-05-1978 obtained signatures. On 30-05-1978 he was taken to Machiipatnam and in spite of protest another document was registered. It was further pleaded during the interval between the 07-04-1978 and 29-05-1978 the Plaintiff was beaten and obtained pronotes including the one executed by the Plaintiff in favour of the Defendant, which was in the custody of one Shaik Amineebie of Chandragudem.

4. It was further pleaded that without releasing the Plaintiff, he was taken to Eluru and confined in the house of one S. Kanaka Rao for about a month and on 30-06-1978 the second Defendant took the Plaintiff from Eluru to Mylavaram and managed the police to obtain his signatures on some papers. Thereafter, the Plaintiff was again brought back to Vijayawada and kept in the house of one D. Chinna Rao and finally on 31-10-1978 the Plaintiff managed to escape from the house of the said Chinna Rao. He made enquiries and came to know about the particular nature of the documents. According to the case of the Plaintiff, the allegations of indebtedness mentioned in the earlier sale deed and passing of the cash consideration in, later sale deeds are all falsity. The Plaintiff came to know that the documents are obtained in the name of his minor son-first Defendant. The Plaintiff challenged the validity of the said sale deeds and also claims to have cancelled the above two sale deeds on 03-11-1978 and informed the same to the Defendant by sending the cancellation deeds. As the Defendants are trying to cause interference with the possession and enjoyment, the suit was filed for declaration of title and also for injunction. It was further pleaded that the Defendants have no capacity to purchase the land.

5. The Defendants filed written statement denying most of the allegations about the claim of the Plaintiff that he is innocent and illiterate and that the Defendants have no capacity to purchase the properties and that the documents are obtained by fraud and coercion and thereby they are vitiated. According to the Defendants, the Plaintiff has executed documents voluntarily and for consideration and there are no grounds to challenge the above sale transactions.

Scribe and attesters are respectable people. According to the Defendants, the second Defendant owes a small amount of debt to one M. Venkata Satyam and when he resorted to unnecessary suit, he has sought for instalments. The second Defendant is an ardent agriculturist and cultivated lands on lease. He has saved money and lent to others. He has got sound financial capacity. The Defendants have been in possession and enjoyment of the property and the suit as framed is not maintainable. The Court fee paid is not correct. Therefore, the suit is liable to be dismissed.

6. On the basis of the above pleadings, necessary issues have been framed by the lower Court and on behalf of the Plaintiff P.Ws. 1 to 8 were examined and marked Exs. A-1 to A-17. On behalf of the Defendants, D.Ws. 1 to 4 were examined and marked Exs. B-1 to B-36. Ex. X-1 was also marked on behalf of the Plaintiff.

7. After considering the evidence on record, the learned Senior Civil Judge decreed the suit of the Plaintiff. As against the said judgment, AS No. 2457 of 1986 was preferred by the Defendants and the learned single judge of this Court by judgment dated 25-09-2000 allowed the appeal and dismissed the suit of the Plaintiff.

8. Aggrieved by the said judgment, LPA was preferred and a learned Division Bench of this Court by the judgment dated 30-11-2000 dismissed the LPA. As against the dismissal order, the Plaintiff has preferred SLP, being SLP No. 2362 of 2001, to the Hon"ble Supreme Court and the Supreme Court in its order dated 19-02-2001 set aside the judgment dated 30-11-2000 in the LPA and finding that the order under challenge needs to be heard in a greater detail and remanded the matter.

9. We heard the learned Counsel for the Appellant Sri Vedula Venktaramana and Sri N. Rama Sarma, for the Respondents touching on all the aspects involved in the case.

10. The points that arise for consideration are:

(1) Whether the plea of the Plaintiff that the documents were obtained under coercion and fraud is true?

(2) Whether the alleged documents are valid and binding on the Defendants and Plaintiff?

(3) Whether the suit for declaration filed by the Plaintiff is tenable?

(4) Whether the judgment of the learned single judge dismissing the plea of the Plaintiff calls for any interference?

(5) To what relief?

POINTS:

11. Before considering the rival contentions of both parties, a plea was raised

before the lower Court that the suit one being filed for declaration of title to the property without seeking a relief of cancellation of document is not valid since the challenge on the sale deeds Exs.B-1 and B-2 said to have been executed by the Plaintiff in favour of the first Defendant are said to have been obtained under coercion and fraud and thereby they being voidable documents. The learned Senior Civil Judge found though the same is one for declaration of title, it is based on the attack of the validity of the sale deeds and therefore the suit as framed cannot be faulted. The same contention was repeated before the learned single judge and he also took the same view holding that there is no need to seek cancellation of the documents. The same contention was feebly raised by the learned Counsel for the Respondents, since it is a legal aspect we wish to answer the same. It is needless to say that there is a difference between a void document and a voidable document. The law is well settled that in case of a void document, there is no need to get it set aside as the party can ignore it. So far as the voidable document is concerned, the party to a document if he feels that his rights are threatened, he has to seek for a cancellation of the same. In this connection, it is useful to refer to Section 31 of the Specific Relief Act, 1963, which reads as under:

Section 31. Whett cancellation may be ordered.-(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so ad judge it and order it to be delivered up and cancelled.

Therefore, even in case of void document or voidable document as per the above provision, a person may sue for setting aside of the same. In case of void document, it is useful to refer the decision reported in Sanjay Kaushish Vs. D.C. Kaushish and others, whereunder in para 43 of the judgment, it was observed as under:

Be that as it may, in my viezv, the well settled principle of law is that if a particular document or decree is void the person affected by the said document or decree can very well ignore the same and file a suit seeking substantive relief which may be available to him without seeking any declaration that the said decree or document is void or any consequential relief of cancellation of the same.

12. In fact, it is the consistent view of the Courts with regard to void documents. In this case, the document as such is not void since it was executed by the Plaintiff but the challenge is on the ground that it was not out of free will and it was by fraud and coercion. The suit was filed by the Plaintiff for a declaration of his title to the property and injunction. It is needless to say that while considering the relief in any suit the Court has to consider the allegations in the plaint and grant relief. If in substance the allegations in the plaint clearly goes to show that as to how the documents were obtained and not enforceable being vitiated and a declaration is sought for title, the Court has to take into

consideration such allegations while granting the relief and a declaration if granted by the Court is substantially a declaration about the binding nature and validity of the sale transactions.

13. It cannot be lost sight that a suit for declaration of title to be decided by a Court takes into its fold, consideration of several factors as to how the Plaintiff is entitled for declaration of title. In such cases the plea of the Defendants about the validity and binding nature and enforceability of any document defeating the title of the Plaintiff have also to be considered. In such cases, the Court naturally views the evidence on both sides leaving apart the frame of the suit. Therefore, the lower Court found that though specific cancellation is not asked, the declaration of title is as good as a relief of cancellation of the sale deeds and found that the suit is not bad.

14. The only impediment in cases of voidable document is the question of limitation and in this case there is no such problem since the suit is filed within three (3) years from the date of the alleged execution of the sale deeds. Therefore, we hold that the suit for a declaration is more exhaustive to determine the title or validity of the transactions and when the relief of declaration of title is granted, it is in substance ignoring or setting aside the transactions under dispute though no separate prayer is made for cancellation of the documents. Many a time it so happens in a suit for declaration of title apart from challenges to the alienation against some Defendants, there may be connected issues to be decided different to the other parties to the suit. Therefore, the suit for declaration of title is more comprehensive and the objections sought to be raised about the maintainability does not find any strength.

15. In this case, it is useful to refer to a decision reported in *Vithoba Bhanji and Others Vs. Vithal Sakroo and Others*, wherein it was held as under:

in order to decide whether the Plaintiff's suit was one which was exclusively a suit for a bare declaration that the alienation is not binding upon them, or whether in essence, it is a suit for any further and better relief, it will be necessary to scan the allegations in the plaint with some care and analyse the substance of the Plaintiff's claim. In order to see the substance of the Plaintiff's case, it is not enough for a Court to consider the mere allegations that the Plaintiff has chosen to make but the Court must go behind the mere form and verbiage of the plaint and ascertain what indeed is the true relief which the Plaintiff is asking for.

16. It is needless to say that the settled proposition of law is that the provisions u/s 34 of the Specific Relief Act, 1963 are not exhaustive and the Court's power to exercise discretion in granting a declaratory decree are wide. In this connection, it is useful to refer to a decision of the Supreme Court in *Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others*, which was also followed subsequently in *Supreme Supreme General Films Exchange*

Ltd. Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Others, In this case it is not in doubt that the Plaintiff is seeking declaration of his legal right and entitlement to the immovable property and title as such. It cannot also be contended that there is no further relief since the Plaintiff being in possession of the property claims relief of injunction. Earlier there used to be a conflict as to the valuation to be adopted by the Court in a suit for cancellation of the document or a decree and the suit for declaration of title. But the law is now well settled.

17. So far as the Court fee payable in a suit for cancellation of sale deed is concerned, as per the recent judgment of our High Court reported in Lakshminagar Housing Welfare Association Vs. Syed Sami @ Syed Samiuddin and Others, it is not on consideration that is mentioned in the sale deed but it shall be on the market value of the property thereby showing that the amount of Court fee will be equivalent to the Court fee payable on a suit for declaration of title, which also takes into consideration the market value of the property. Further more in a suit for declaration of title, there will be several aspects to be considered by a Court against the several parties to the suit apart from the validity of the sale transaction.

18. As rightly found by the lower appellate Court coercion and fraud has to be pleaded and proved. So far as the plea of coercion is concerned, except a statement of confinement on 06-04-1978 and beating, there are absolutely no other facts attributed. The plea is very vague to attract the ingredients of coercion or any fraud in bringing about the documents. Assuming to be that the plea taken by the Plaintiff is sufficient, the question is about the burden of establishing the same and there can be no dispute about the fact that the burden is on the Plaintiff to prove either coercion or fraud exercised on him. Evidently, both the Courts found that there is no direct evidence of proving the above facts. The difficulty of the second Plaintiff can be understood by the fact that the first Plaintiff who is said to be the victim was not available for giving evidence and the information is only for the second Plaintiff said to have been given by the first Plaintiff. Added to that none of the persons associated with those documents were examined on behalf of the Plaintiff. Therefore, the oral evidence attacking the document is lacking and the lower Court has come to a conclusion on circumstances available on record to come to a conclusion that the document is vitiated. Each of the circumstances found by the lower Court was further analysed by the learned single judge and discarded the circumstances.

19. In fact the learned Counsel for the Appellant has also reiterated all the contentions, which found favour with the lower Court and tried to impress that the trial judge has taken a reasonable and correct view of the matter.

20. The first circumstance the learned trial judge took into consideration was that the second Defendant is not capable of purchasing the property and the consideration was not paid before the Sub-Registrar and the second Defendant as D.W. 1 claimed that he is only an agriculturist and purchased the property

from his agricultural income for which there is no evidence. Reliance was also placed on Ex.A-16, which is an affidavit given by the second Defendant in O.S. No. 431 of 1977 whereunder the second Defendant pleaded for instalments @ 25/-. Subsequently, the amount was also not paid. The Court also considered that the Defendants admitted to have borrowed from banks earlier to Exs. B-1 and B-2 and he was repaying the debts. The second Defendant is attending to coolie and he claims exporting baskets of mangoes for which there is no proof. Touching on this aspect, the learned single judge found that it is not uncommon for the judgment Debtors to plead for instalments in spite of financial capacity and judicial notice can be taken of the fact that agriculturists have a penchant for the purchase of the lands adjacent to their lands, when offered for sale, even by borrowing the amounts from others. Further more, it is useful to refer that in the plaint no specific allegation about the instalment decree was made and it is only stated by the Defendant in his written statement which is sought to be taken advantage by the Plaintiff. There is nothing to show that a document is invalidated by the mere fact that consideration was not paid before the Sub-Registrar. In many transactions it happens so, it is not that all persons possessed of the cash or liquidity acquires the property and it many times happens that people even though do not have money, acquires the property by any source which they can avail. All the contentions raised by the Plaintiff fails, if we are to say for the single reason that if the second Defendant is not a solvent, one fails to understand as to how he could have lent a sum of Rs. 5,600/- in 1977 which is not a small money and as to how he could have believed the second Defendant and given the properties on lease to him in 1977. These things would not have been accommodated by the Plaintiff if the second Defendant is a man on street without any liquidity or solvency. Therefore, the above circumstances referred above clearly shows that the contentions of the Plaintiff and inference drawn by the learned trial judge are far from reality and have been rightly ignored by the learned single judge. It is people who are eager to earn money works be as a labourer, be by a selling mango baskets or by cultivation of lands. This circumstance shows the attitude of the second Defendant to earn and save.

21. The failure of the Defendants to produce a discharged promissory note as found by the lower Court is irrelevant. Evidently, when a promissory note has been discharged it will be given back to the executants of the promissory note and it will not be kept with the holder of the promissory note. Therefore, when the consideration under the promissory note was given discharge under the sale, the promissory note will be returned to the first Plaintiff and there is absolutely no reason for examining the scribe or attesters or to produce the said promissory note by the second Defendant.

22. The learned Senior Civil Judge has taken into consideration the case of the Plaintiff that there was no necessity to sell the property and the first and second Plaintiffs are only members of the family and they have no children. It was also found that in Exs. A-3 to A-9 up to 1977 the Plaintiff has purchased the property. The above purchases may be true. The learned Senior Civil Judge failed to take

into consideration the allegations in the plaint that the first Plaintiff in the year 1977 sold his house property and further given up the own cultivation and was leasing the properties to others and shifted to Chandragudem and agriculture was discontinued after 1975-76. Therefore, it is not as though that the first Plaintiff was acquiring the properties only and he was also disposing. Furthermore, after the end of agricultural season on 1975-76, he had no cultivation and the second Defendant was inducted into possession of the property as lessee. It is not for us to consider the prudence of the first Plaintiff as to why he has resorted to sale of the property. The reason is obvious since he had no children, cannot look after the cultivation/might thought of disposing of the properties.

23. The learned Senior Civil Judge found the circumstance that the first Plaintiff was absent from the village for a period of six months, which fortifies the case of the Plaintiff about the alleged circumstance of extracting the documents. According to the trial judge, he has taken it for granted that from 06-11-1978 onwards indisputably the first Plaintiff was not in Chandragudem and in the caveat application (Ex.A-17) the second Defendant alleged that from 06-04-1978, the second Plaintiff was absent. Allegations in the said affidavit that second Plaintiff has given a report against the second Defendant for the missing of the first Plaintiff and that the police arrested the second Defendant and the first Plaintiff was brought to Mylavaram Police Station and the second Defendant apprehended a suit. Therefore, the learned Senior Civil Judge has taken into consideration that the version set up by the first Plaintiff is true.

24. Negating this conclusion arrived at by the learned Senior Civil Judge, the learned single judge found that Exs.B-1 and B-2 were executed on different dates with a clear gap of more than one month and P.W. 1 stated that the deceased did not take the promissory note executed by the second Defendant and further she sent a word to the second Defendant through her father and the Sarpanch and that the second Defendant told them that the deceased went to his relatives house and would return in four or five days. The learned single judge also found that she did not inquire as to whether the second Defendant paid the money or not. The learned single judge also found that 22 or 23 days after the deceased left the house and as he did not return, she gave a report to the police at Mylavaram and that the report was drafted by one P. Venkateswara Rao and the police did not take any action thereon. It is also found by the learned single Judge that the said P. Venkateswara Rao was not examined and the report said to have been given by P.W. 1 is also not produced before the Court. Furthermore, as can be seen from the specific allegations in the plaint after the confinement of the Plaintiff in between the date of two registrations of sale deeds, the second Defendant and his major son fraudulently managed to take the pronotes including the one executed by the second Defendant in favour of the Plaintiff from the custody of one Shaik Ameena Bee of Chandragudem. The said Ameena Bee who is an important witness was not examined to prove the theory of the Plaintiff.

25. Further more, keeping aside the allegations in the alleged caveat the specific allegation in the plaint were that on 30-06-1978 the second Defendant took the Plaintiff from Eluru to Mylavaram police station and managed the police there and thereafter brought to Vijayawada and was detained at Vijayawada for about four months in the house of one D. Chinna. No effort was made to prove the above allegations nor was any attempt made to summon the witness to prove the alleged facts. From the evidence of P.W. 1, it is quite clear that the second Defendant was very much available in the village from the next day after he allegedly took the deceased from his house. It is difficult to believe that P.W. 1 being the wife of the deceased-first Plaintiff could have kept quite for a period of six months when he was said to have been confined elsewhere. As can be seen from the contents in Ex.A-17, they do not reflect that the first Plaintiff was away from the village from 06-04-1978. Evidently, this caveat petition was filed some time in November-1978 and not referring to anything after the alleged detention. In fact the caveat (Ex.A-17) clearly reflects that the first Plaintiff has executed the suit sale deeds on 06-04-1978 and on 29-05-1978 for valuable consideration. The caveat does not disclose as to when a complaint was given to the Mylavaram Police Station and as to when first Plaintiff was brought to the police station. Therefore, from Ex. A-17 which was issued in November, 1978 no inference can be drawn that the second Defendant admitted the absence of the Plaintiff from 06-04-1978. Therefore, the conduct on behalf of the P.W. 1 is unnatural when not reacting about the absence of her husband for a period of six months. The evidence of the persons who are aware of the facts and would have been aware of the facts is also not placed before the Court. Therefore, we have no hesitation to hold that the conclusions arrived at by the learned single judge discarding the finding of the trial Court cannot be faulted. We may also further add here that though the first Plaintiff is said to have been confined from 06-04-1978 and come out on 31-10-1978 he himself did not give any complaint to the police station about the wrongful confinement or the coercion or the extraction of the documents as alleged by him. Any prudent man would have definitely done so if the version is true. Even before filing of the suit also, no legal notice was given even though in para 13 of the plaint it was alleged that after the release he has cancelled the documents on 03-11-1978 which are under Exs. A-1 and A-2 and informed the developments of the same by sending the cancellation deeds to them. There is absolutely no evidence to prove the same. No registered acknowledgment or accompanying letter is filed informing about the cancellation of the sale deeds. The conduct of the deceased himself is unnatural though the first Plaintiff is said to have been beaten, causing injury to his knee, there is no proof of medical treatment by himself or by any body. The theory of wrongful confinement and extracting the sale deeds also fails for the simple reason that Exs. B-1 and B-2 are on different dates and if anybody indulges in criminal activity, would not give such a scope of delay and there is absolutely no reason as to why the documents should be taken on different dates when a man is in physical custody and the custody being forcible.

26. The other contention that the persons associated with the documents are labourers or mutta mastries and their credibility cannot be accepted is far-fetched. Merely because they are living by their dignity of labour, their character cannot be doubted while they have got their association with the parties. All these things may come as a lighter circumstances, which have no bearing at all when the theory propounded by the first Plaintiff is fallacious. So also the mere fact that the documents were registered at Machilipatnam is also no ground to hold that the appreciation is suspicion. Further more, the claim of the Plaintiff that he is a weak intellect and not worldly-wise is also unbelievable since he acquires properties, sell them and manages of his own accord and lends money to others. The learned single judge has rightly found that the evidence on behalf of the Plaintiff is an ipse dixit and we have no hesitation in holding that best evidence which is available supporting the contentions of the Plaintiff is not produced.

27. Further more, we wish to add that P.W. 5 who is said to be associated with the documents Exs. A-1 and A-2 which are cancellation deeds has clearly deposed that "I do not know whether the first Plaintiff received any sale consideration under those sale deeds. The first Plaintiff executed two sale deeds. He told me about the sale consideration but I do not remember those amounts". This statement of P.W. 5 is sufficient to hold that the documents were executed by the deceased-first Plaintiff for consideration. The evidence of P.Ws. 2 to 5 who are said to be associated with Exs.A-1 and A-2 does not clearly bring out the theory in the plaint since none of them have spoken about the circumstances if any disclosed by the first Plaintiff at the time of execution of the cancellation deeds. On the other hand, the evidence adduced on behalf of the Defendants shows that the consideration was paid in the presence of the witnesses who are examined by the Defendants.

28. All the circumstances against the first Plaintiff are further crystallised by the single fact that the suit was filed on 13-11-1979 merely one year after the realisation of the fraud and coercion, even without issuing any notice. It is quite clear that in order to explain and attempt to avoid the liability on sale deeds, the theory of coercion fraud and confinement for six months was developed by the first Plaintiff.

29. The learned Counsel for the Appellant contended that the Court sitting in appeal should not have interfered with the discretion of the lower Court and should not have reappraised the evidence. We are not agreeing with the above contention since interfering with the exercise of discretion is quite different from the power of the appellate Court to reassess the evidence and come to a conclusion of its own. In this connection the powers under Order 41 Rule 33 CPC are wide and poses no doubt about the power of the appellate Court to reassess the evidence and pass appropriate orders or decrees.

30. On the above analyses, we find no merits in the appeal and accordingly the appeal is liable to be dismissed. The points are accordingly answered.

31. The L.P.A is accordingly dismissed with costs.