
(2010) 08 AP CK 0052

In the Andhra Pradesh High Court

Case No : Second Appeal No"s. 299 and 323 of 1999

Venkatramaiah and Another

APPELLANT

Vs

Madam Sarojanamma

RESPONDENT

Date of Decision : 24-08-2010

Acts Referred:

Evidence Act, 1872 — Section 114, 45

Citation : (2010) 6 ALD 697 : (2011) 1 ALT 456

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V.L.N.G.K. Murthy, for the Appellant; B.V. Bakshi, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—These two Second Appeals are between the same parties. Hence they are disposed of through a common judgment. For the sake of convenience, the parties are referred to, as arrayed in Second Appeal No. 323 of 1999.

2. The appellant filed O.S. No. 23 of 1985 in the Court of District Munsif, at Pargi, against the respondents for the relief of specific performance of an agreement of sale, in respect of 26 guntas of land and for perpetual injunction, in relation thereto. He pleaded that he purchased the entire land in Sy. No. 18/ of Pargi Village with specific boundaries owned by the mother of respondents 1 to 3, by name, Babamma, through a registered sale deed dated 14-07-1978 (Ex.A-14), for a consideration of Rs. 6,000/ -. He stated that himself and his vendor were under the assumption that the land covered by that sale deed is only one acre and the same was mentioned in the sale deed. According to him, the measurement of the land, after registration of the document has revealed that the extent is Ac. 1.26 guntas, and on a demand made by Babamma, he paid a sum of Rs. 3,900/ -, representing the cost of 26 guntas, on 06-08-1978, and on the same day, agreement of sale, Ex.A-1, was executed in respect thereof. The possession of the entire Ac. 1.26 guntas of land was said to have been delivered

on the date of registration of sale deed (Ex.A-14), i.e., 14-07-1978 itself. He stated that a poultry shed was constructed on part of the land, and the cultivation is being done in the rest of it. He further stated that, in spite of demands, respondents 1 to 3 did not execute the sale deed, in respect of 26 guntas of land. The basis for impleading the 4th respondent was that, an extent of 22 guntas of land was purchased by her, under two separate sale deeds.

3. The 4th respondent, on the other hand, filed O.S. No. 24 of 1983 in the same Court, for the relief of perpetual injunction against the appellant and his father, as regards the same property. She pleaded that an extent of 22 guntas of land was purchased by her from Babamma, through sale deeds dated 25-11-1978 and 04-01-1979, marked as Exs.B-2 and B-3, respectively. It was urged that, by mistake, the northern boundary of the land, purchased under those documents, was shown as the land of Razack, and in fact, it is the land of one acre, purchased by the appellant, under Ex.A-1. She stated the manner in which she has been enjoying the property, and complained that the appellant is trying to interfere with her possession.

4. O.S. No. 24 of 1983 was dismissed by the trial Court on 29-11-1988. Aggrieved thereby, the 4th respondent filed A.S. No. 2 of 1989 in the Court of Senior Civil Judge, Vikarabad. The appeal was allowed on 21-12-1998, and thereby O.S. No. 24 of 1983 was decreed. Second Appeal No. 299 of 1999 arises out of it.

5. O.S. No. 23 of 1985 was decreed on 22-03-1996 by the trial Court. The respondents 1 to 3 filed A.S. No. 10 of 1997. The appeal was allowed on 21-12-1998. Second Appeal No. 323 of 1999 is filed against it.

6. Sri V.L.N.G.K. Murthy, learned Counsel for the appellant submits that in the sale deed, Ex.A-14, executed by Babamma, no extent was mentioned, and the boundaries furnished therein are in respect of the entire land of Ac. 1.26 guntas. He contends that though the appellant became the absolute owner of the entire extent of Ac. 1.26 guntas, the agreement of sale, Ex.A-1, was obtained only to put the record straight, and to avoid further complications, and that the trial Court had decreed the suit on a dispassionate consideration of the oral and documentary evidence. Learned Counsel submits that the lower Appellate Court has reversed the decree in A.S. No. 10 of 1997, on the basis of certain assumptions with reference to Ex.A-1. He further submits that the existence of a signature, as well as thumb impression of the executant, on a document, is not an extraordinary circumstance, and the lower Appellate Court reversed the decree of the trial Court without any basis.

7. As regards the judgment in A.S. No. 2 of 1989, which arises out of the suit for injunction, filed by the 4th respondent, learned Counsel submits that, even according to the recitals in the plaint, the boundaries for the 22 guntas of land are not correctly mentioned, and unless a deed of rectification was executed, or a suit for that relief is filed, there did not exist any basis to seek the relief of

injunction. He contends that the possession of the entire land of Ac. 1.26 guntas was delivered, at a time, and there was no scope, or occasion for the original owner of the land, Babamma, to have delivered possession of 22 guntas, in favour of the 4th respondent.

8. Sri B.V. Bakshi, learned Counsel for the respondents, on the other hand, submits that there is a clear contradiction of terms, in the plea of the appellant in his suit for specific performance. He contends that, if the entire Ac. 1.26 guntas of land was purchased under Ex.A-14, it is just unthinkable as to how and why Ex.A-1, the agreement of sale, was obtained. He submits that though the gap between those two documents is hardly three weeks, it was not explained as to why the sale deed contained only the thumb impression of Babamma, who was the old illiterate woman, and in Ex.A-1, her signature in writing, as well as a thumb impression appeared. He contends that an attempt was made by the appellant to claim that he is in possession of the rest of 26 guntas also, though what was purchased by him was only one acre.

9. Learned Counsel further submits that, if, in fact, the entire consideration for the remaining land was also paid, as mentioned in Ex.A-1, there was no reason, why the sale deed was not obtained. He contends that the land, other than one acre, was in possession and enjoyment of Babamma, and she conveyed the same to the 4th respondent, through Exs.B-2 and B-3. According to him, the possession of the 4th respondent was clearly demonstrated through oral and documentary evidence.

10. Though there existed much common, in both the suits, they were tried, independently, and evidence was also recorded separately. In O.S. No. 24 of 1983, filed by the 4th respondent, for injunction, the following issues were framed:

1. Whether the plaintiff is the owner and possessor of suit land? and
2. Whether the alleged interference is true?

11. Strictly speaking, the first issue ought to have been only as regards the possession, since the question as to ownership cannot be decided conclusively, in a suit for injunction.

12. On behalf of the 4th respondent, PWs 1 to 8 were examined and Exs.A-1 to A-9 were filed. On behalf of the appellant, DWs 1 to 5 were examined and Exs.B-1 to B-11 were filed. An Advocate Commissioner was appointed and the record maintained by him was marked as Exs.C-1 to C-9.

13. In O.S. No. 23 of 1985, as many as 7 issues were framed, which read:

1. Whether the agreement of sale dated 6-8-1978 executed by Late Smt. Babamma is true?
2. Whether the suit is bad for non-joinder of necessary parties?

3. Whether the 4th defendant is a bonafide purchaser for consideration under two registered sale deeds without notice of the alleged agreement of sale dated 6-8-1978?

4. Whether the valuation of the relief of declaration in respect of the two registered sale deeds dated 25-11-1978 and 4-1-1979 is incorrect?

5. Whether the reliefs sought are barred by limitation?

6. Whether the plaintiff is entitled for the relief of specific performance sought?

7. Whether the plaintiff is entitled for the declaration sought in respect of the two registered sale deeds dated 25-11-978 and 4-1-1979?

14. In O.S. No. 23 of 1985, on behalf of the appellant, PWs 1 to 5 were examined and Exs.A-1 to A-14 were filed. Ex.A-1 is the agreement of sale, and Ex.A-14 is the sale deed, through which one acre of land was purchased. On behalf of the respondents DWs 1 to 3 were examined and Exs.B-1 to B-6 were filed. The trial Court decreed the suit for specific performance, filed by the appellant, and dismissed the suit for injunction filed by the 4th respondent. The lower Appellate Court reversed those decrees and granted reliefs accordingly, duly framing the relevant points for consideration:

In A.S. No. 2 of 1989:

Whether the plaintiff is entitled for the perpetual injunction sought?

In A.S. No. 10 of 1997:

1. Whether the agreement of sale dated 6-8-1978 executed by late Smt. Babamma is true?

2. Whether the suit is bad for non-joinder of necessary parties?

3. Whether the 4th appellant/defendant is a bona fide purchaser for consideration under two registered sale deeds without notice of the alleged agreement of sale dated 6-8-1978?

4. Whether the valuation of the relief of declaration in respect of the two registered sale deeds dated 25-11-978 and 4-1-1979 is incorrect?

5. Whether the reliefs sought are barred by limitation?

6. Whether the respondent/plaintiff is entitled for the relief of specific performance sought?

7. Whether the respondent/plaintiff is entitled for the declaration sought in respect of the two registered sale deeds dated 25-11-1978 and 4-1-1979?

15. Babamma, the mother of respondents 1 to 3 was the absolute owner of Ac. 1.26 guntas of land in Sy. No. 18/ of Pargi Village. From her, the appellant purchased an extent of one acre land through Ex.A-14, dated 14-07-1978. It is

the case of the appellant that what was purchased under Ex.A-1 is the entire land in Sy. No. 18/, and himself and Babamma proceeded on the assumption that it was one acre. It was pleaded that when the land was purchased after the sale deed was executed and registered, it emerged that the extent is Ac. 1.26 guntas. On the one hand, the appellant pleaded that he became the absolute owner of the entire land, by taking shelter under the principle that, in respect of the land transactions, boundaries will prevail over the extent. If his claim fits into that plea, the only relief he could have prayed for, is the one of declaration of title, vis-?-vis the entire land in Sy. No. 18/, irrespective of the extent. However, within three weeks after purchase under Ex.A-14, he is said to have entered into an agreement of sale, Ex.A-1, in respect of 26 guntas, in the same survey number.

16. The truth or otherwise of Ex.A-1 apart, the plea, in relation thereto, would disentitle the appellant to take shelter under the principle of, boundaries prevailing over the extent. Therefore, he has to rest his entire claim upon Ex.A-1, and no other factor.

17. Ex.A-1 is also said to have been executed by Babamma. She was illiterate and used to put her thumb impressions, wherever she executed documents. That is the reason why her thumb impression was found in Ex.A-14. However, in Ex.A-1, which is said to have been executed by her within three weeks; signature in writing, and thumb impression, said to be of Babamma, are found. The appellant failed to explain, as to how and under what circumstances the written signature of Babamma came into existence.

18. Here itself, it is necessary to make a mention of Exs.A-1 and A-2, marked in O.S. No. 24 of 1983, i.e., the suit for injunction. Those two documents are the sale deeds, executed by Babamma on 25-11-1978 and 04-01-1979, long after the date of Ex.A-1, in the suit for specific performance, i.e. agreement of sale. On the two documents executed, long after the alleged agreement of sale, Babamma has put only her thumb impressions. If it is to be assumed that the lady learnt writing between 14-07-1978 and 06-08-1978, that signature in writing would have been subscribed on the two sale deeds, executed in November, 1978 and January, 1979. Therefore, the written signature of Babamma on Ex.A-1, the alleged agreement cannot be believed, and it is a clear case of forgery.

19. In addition to the written signature, a thumb impression is also existed on Ex.A-1. However, no mention is made, as to whose thumb impression it is. It is mandatory that whenever a thumb impression is found on a document, it must be mentioned, as to who has put it, so much so; if it is by a man, it is required to be the left thumb impression, and if the person is a woman, the impression must be of right thumb. Therefore, the thumb impression on Ex.A-1 cannot be said to be of Babamma. Assuming that the failure to mention the name can be ignored, and it can be treated as that of Babamma, since the document is executed by her, heavy burden rested upon the appellant, to prove it, by filing an application

u/s 45 of the Indian Evidence Act. The exercise would not have posed any difficulty, since several documents executed by Babamma, being Ex.A-14, a sale deed dated 14-07-1978, in favour of the appellant himself, and Exs.A-1 and A-2, in the injunction suit, executed in favour of respondent No. 4 are available for comparison. No such exercise was undertaken. A presumption provided for, u/s 114 of the said Act, arises to the effect that a comparison, if undertaken; would have disproved the plea of the appellant.

20. The finding of the trial Court on the aspects, referred to above, was just untenable. It did not, at all, take into account the discrepancies, pointed out above. It believed whatever was said by the witnesses, examined on behalf of the appellant. The lower Appellate Court has dealt with important aspects, which have bearing upon the truth or otherwise of Ex.A-1.

21. There is one strong circumstance, which militates against the appellant, but remained unexplained. The agreement is said to have been executed in the year 1978. However, the suit for specific performance was filed nearly 7 years thereafter, that too, after the 4th respondent filed a suit for injunction. Further, hardly any substantial steps were taken in the suit, during the life time of Babamma.

22. At any rate, the relief of specific performance is discretionary in nature, may be, that the discretion must be exercised with care and caution. When the appellant is unable to explain several contradictions, and when the signature, and thumb impression, on Ex.A-1, is found to be forged, there is no way, that he can be granted the relief of specific performance.

23. So far as the suit for injunction is concerned, the 4th respondent herein has not only pleaded the manner in which she acquired title, but also has proved her possession over the land. The tenants, who cultivated the land, and other witnesses, have clearly spoken about the manner of her enjoyment of the land. Exs.A-3, A-4 and A-5 are the Pahanies for the years 1980-81, 1981-82, and 1982-83, i.e. the three consecutive years, before the suit was filed. On his part, the appellant filed pahanies for the year 1983-84, but they were found to be in respect of different land.

24. The appellant sought to make out a case, on the basis that the northern boundary, in Exs.A-1 and 2, filed in that suit, i.e., the sale deeds in favour of the 4th respondent; was shown as land of Razack, which happens to be northern boundary of the land, purchased by him. In all fairness and with utmost clarity, the 4th respondent stated in the plaint itself, that the boundary was wrongly mentioned, and the land in their possession is on the southern side of the land of one acre, purchased by the appellant. It is not even alleged that the 4th respondent has encroached into any part of one acre of land, purchased by him. Babamma is the common vendor for the appellant as well as the 4th respondent. The transactions are separated by four months. The land purchased by the appellant is one acre, and the 4th respondent purchased 22 guntas, in two bits.

25. This Court is of the view that no substantial questions of law arise for consideration in these two second appeals. They are accordingly dismissed.

26. There shall be no order as to costs.