
(2006) 01 AP CK 0046
In the Andhra Pradesh High Court
Case No : AS No. 2032 of 1995

Yalla Arjuna Prasad

APPELLANT

Vs

Yalla Gangaraju and Others

RESPONDENT

Date of Decision : 23-01-2006

Acts Referred:

Citation : (2006) 2 ALD 653 : (2006) 3 ALT 379

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Sri V.L.N.G.K. Murthy, Counsel representing the appellant and Sri V. V.L.N. Sarma, Counsel representing the 3rd respondent.

2. Sri V.L.N.G.K. Murthy, the learned Counsel representing the appellant/defendant in O.S. No. 22/92 on the file of Subordinate Judge, Pithapuram made the following submissions. The learned Counsel would maintain that this is a case where the original plaintiff, Yalta Gangaraju, who is no more, had challenged the validity of the sale deed dated 21-10-1991 executed by her on the ground of either fraud or undue influence. The learned Counsel also would maintain that the particulars mentioned thereof in the pleading are highly insufficient. Even otherwise the burden is on the plaintiff to establish the same irrespective of the fact whether appellant/defendant had proved his stand or not. The learned Counsel would maintain that no doubt Yalta Gangaraju was no more and subsequent thereto Yalla Butchiraju, who was brought on record was examined as P.W. 1 and except this evidence there is no other evidence available on record on behalf of the plaintiff. The learned Counsel also would maintain that as against this evidence the appellant herein/defendant had examined himself as D.W.I and also had examined the identifying witness as D.W.2, the scribe as D.W.3 and the Sub-Registrar as D.W.4 and in the light of the evidence available

on record the learned Judge recorded certain findings and ultimately decreed the suit. In view of the same the said findings cannot be sustained and are liable to be set aside.

3. Per contra Sri V.V.L.N. Sarma, the learned Counsel representing the 3rd respondent in the appeal who was brought on record and who is now further prosecuting the litigation as the legal representative of the original plaintiff made the following submissions. The learned Counsel would maintain that the 3rd respondent Yalla Suryanarayana who is none other than the brother of the appellant/ defendant Yalla Arjuna Prasad, is the fostered son of Yalla Gangaraju and Yalla Butchiraju and this fact is not in serious dispute. The learned Counsel also would maintain that the age of Gangaraju at the relevant point of time to be taken into consideration and also the fact that none had accompanied Yalla Gangaraju at the time of execution of Ex.A.I (=Ex.B-1) transaction also would assume some importance. The learned Counsel also would maintain that due to the misfortune of Yalla Suryanarayana, Yalla Gangaraju was no more by the time Yalla Butchiraju was examined as P.W.I and except this evidence there is no other evidence available on record. But however the Counsel would contend that several admissions made by D.W.I, D.W.2 and D.W.3 would amply establish that the deal is a clandestine deal or a secret deal. The Counsel also commented on the discrepancies relating to the aspect of delivery of possession and the non-delivery of the title deeds and several of the discrepancies in relation to the alleged execution and the clear proof relating to non-passing of consideration. The Counsel also commented that though it is stated that the consideration was for the purpose of discharging the debts, none concerning the same were examined and hence the transaction appears to be shaky or a fishy transaction. The learned Counsel also would comment that there is no evidence about the capacity of the appellant/defendant in the suit, to purchase the property and how he raised the funds for the purpose of the said purchase. While concluding his submissions, the learned Counsel had taken this Court through the evidence of D.W.I meticulously and several of the discrepancies and further pointed out to the nature of evidence of D.W.2, D.W.3 and D.W.4 as well and would comment that even in the light of the discrepancies, it can be taken that the plaintiff established her case and hence the present legal representative is bound to succeed and the appeal is liable to be dismissed. The learned Counsel also placed reliance on Smt. Takri Devi Vs. Smt. Rama Dogra and Others, , to substantiate his contentions.

4. Heard the Counsel on record and perused the oral and documentary evidence available on record and the findings recorded by the learned Judge.

5. The original plaintiff Yalta Gangaraju, w/o. Yalla Butchiraju filed the suit for declaration that the sale deed dated 21-10-1991, the registration copy of which was marked as Ex.A-1 and the sale deed was marked as Ex.B-1, is void and not binding and to set aside the same being voidable obtained by fraud or misrepresentation and cheating. The said Gangaraju died and her husband Yalla

Butchiraju, the 2nd plaintiff, was added as per orders in I.A.No.40/94 dated 14-2-1994. During the pendency of the appeal the said Butchiraju also died and the 3rd respondent, the fostered son Yalla Suryanarayana, was impleaded as legal representative by the order dated 18-1-1997 in C.M.P. No. 4445/96. In the light of the rival submissions made by both the Counsel, the following Points emerge for consideration in this Appeal :

1. Whether the sale deed Ex.B-1 (= Ex.A-1) can be said to be vitiated by fraud or undue influence in the facts and circumstances of the case ?

2. Whether the plaintiff in the suit can be said to have discharged the burden for the purpose of setting aside the sale deed on the grounds pleaded in the plaint ?

3. If so to what relief the parties would be entitled to ?

6. Points 1 and 2 :-As already stated supra, the original plaintiff Yalla Gangaraju filed the suit for declaration that the sale deed in question is void or in alternative to set aside the same on the ground of fraud or misrepresentation or cheating as the case may be. It was pleaded that the 1st plaintiff has no other property except the plaint schedule property and the 1st plaintiff and her husband are residents of Mangiturthi and they had no children. One Yalla Veerabhadra Swamy is the son of the junior paternal uncle of the 1st plaintiff's husband. The said Yalla Veerabhadra Swamy through his second wife had two sons Suryanarayana and the defendant. It is needless to say that the 3rd respondent in the appeal is the said Suryanarayana. It was also pleaded that Suryanarayana, the first son of Veerabhadra Swamy through his second wife, had been fostered by the 1st plaintiff and her husband and the said Suryanarayana was conferred with some property rights by the 1st plaintiff's husband. Several other details had been pleaded and it was specifically stated that when the 1st plaintiff was suffering with the complaint of liver, in view of the old age she wanted that she should be taken to C.M.C. Hospital, Pithapuram on 21-10-1997 and the 1st plaintiff's husband was old and their fostered son Suryanarayana was not readily available and when the defendant offered himself to take the 1st plaintiff to C.M.C. Hospital, Pithapuram for treatment and the 1st plaintiff agreed and she was taken by the defendant to C.M.C. Hospital, Pithapuram. It was also pleaded that she was taken to the near police station and the defendant brought her coffee and made her to drink it. While she was not in a position to know what she was doing the 1st plaintiff was taken to some other place and her thumb impressions were taken on some papers without disclosing for what purpose her thumb impressions were being taken. Several other details relating to the same also had been pleaded.

7. A written statement was filed denying the allegations. An additional written statement also had been filed.

8. On the strength of the pleadings, the following issues and additional issues had been settled :

Issues :

1. Whether the sale deed dated 21-10-1991 is void and not binding on the plaintiff ?
2. Whether the defendant is in the possession of the schedule mentioned property pursuant to the sale transaction ?
3. Whether the defendant is a bona fide purchaser for value ?
4. Whether the sale deed dated 21-10-1991 was obtained by fraud, cheating and misrepresentation?
5. To what relief ? Additional Issue :

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

9. Inasmuch as the original plaintiff was no more, by the date of examination of P.W.I, the husband P.W.I alone was examined and Exs.A-1 to A-3 were marked. Ex.A-1 is the registration extract of the sale deed dated 21-10-1991. Ex.A-2 is the office copy of the notice dated 30-10-1991. Ex.A-3 is the reply notice got issued by the defendant to the plaintiff dated 10-11-1991. It is no doubt true that within a short time of nine days from the date of execution of Ex.A.1, Ex.A.2 was issued by the plaintiff to the defendant. Ex.B-1 is the original registered sale deed executed by Yalla Gangaraju, the registration extract of which was marked as Ex.A-1 as already referred to supra. As against this evidence, the defendant examined himself as D.W.I and the identifying witness as D.W.2, the scribe as D.W.3 and the Sub-Registrar as D.W.4. Apart from Ex.B-1, Ex.B-2 bunch of land tax receipts, Ex.B.3 from IB i.e., ryot pass book, Ex.B.4 a portion in Ex.B.1 sale deed also had been marked. The learned Judge on appreciation of the whole evidence available on record and also after referring to Sennimalat Goundan and Anr. v. Seelappa Goundan and Ors. AIR 1929 PC 81 ; Afsar Sheikh and Another Vs. Soleman Bibi and Others, ; Subhas Chandra Das Mushib Vs. Ganga Prosad Das Mushib and Others, and Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd. and Others, , ultimately came to the conclusion that on the overall facts and circumstances the case as pleaded by the plaintiff had been established and ultimately the suit was decreed. Aggrieved by the same, the present appeal is preferred.

10. At the outset it may be stated that even on the strength of the very pleading of the plaintiff, it cannot be said that the sale transaction is a void transaction. At the best it can be said to be a voidable transaction vitiated either by fraud or by undue influence as the case may be. It is no doubt true that several of the factual details had been narrated in the pleading. It is also true that within a short time inasmuch as the original plaintiff was no more, the husband was brought on record. It is also true that he was of sufficiently old age. The relationship between the parties also is not in serious controversy. The 3rd defendant in the appeal, the fostered son of the said Gangaraju and Butchiraju, is none other than the brother of the appellant/defendant. These aspects also

may be taken into consideration while deciding the validity or otherwise of Ex.B-1 (=Ex.A-1) transaction. No doubt certain discrepancies relating to passing of consideration and other aspects had been pointed out in the evidence of D.W.2 and also D.W.3 to substantiate the contention that this may be either a secret deal or a clandestine deal. The fact that the old lady had been taken to the hospital without any other assistance by yet another relative, a close relative who is yet another brother of the fostered son of this old lady, may in a way support the contention or the stand taken by the original plaintiff. It is unfortunate that except the evidence of P.W.I there is no other evidence available on record. Several other circumstances had been pointed out relating to the alleged capacity of the appellant/ defendant to purchase the property and also the falsity of certain of the recitals specified in Ex.A-1 transaction. It is pertinent to note that both the parties had not let in any evidence in this discretion, evidently it may be so for the reason that inasmuch as, as far as the plea of fraud or undue influence are concerned the burden to discharge is on the plaintiff, the appellant/ defendant had not chosen to let in any evidence in relation to these aspects. But it is pertinent to note that none of the attestors to the transaction in question had been examined. However, surprisingly one identifying witness and the scribe alone had been examined and no doubt the Sub-Registrar, the official witness, was examined. This is the evidence available on record.

11. It is true that on a careful scrutiny of the evidence of D.W.I, the same is also not satisfactory. Certain of the admissions made by D.W.2 would establish that the transaction may not be a true transaction but it is pertinent to note that these stray admissions made by these witnesses may not be sufficient to arrive at a conclusion that the plaintiff was able to discharge the burden relating to the plea of either fraud or undue influence. It is suffice to state that some more evidence is essential in relation thereto. This Court is not inclined to express any further opinion relation to the validity or otherwise of Ex.B-1 (= Ex.A-1) transaction at this stage. Several of the aspects which had been pointed out by the learned Counsel also may have to be taken into consideration. But at the same time it is also essential that apart from the evidence of P.W.I, there must be some other supporting evidence to substantiate the stand taken by the original plaintiff at the earliest point of time even in Ex.A.2 notice. It is no doubt true that immediately within a period of nine days the said notice Ex.A-2 had been issued. This may be one of the factors which may have to be taken into consideration. In view of the fact that except the evidence of P.W.I there is no other evidence available on record, despite the fact that certain discrepancies in the evidence of the identifying witness D.W.2 and the scribe D.W.3 had been pointed out, this Court is of the considered opinion that inasmuch as a registered sale deed is being attacked on the ground of fraud or undue influence, in view of the insufficiency of evidence available on record, the findings recorded by the learned Judge cannot be sustained and accordingly the said findings are hereby set aside and the matter is being remanded affording opportunity to both the parties to let in further evidence to substantiate their respective contentions.

12. Point No. 3 : In the light of the findings recorded above the judgment and decree made by the learned Subordinate Judge, Pithapuram in O.S. No. 22/92 dated 27-10-1995 are hereby set aside and the matter is remanded to the trial Court to afford opportunity to both the parties to let in further evidence on all the aspects and decide the same afresh in accordance with law, preferably within a period of six months from the date of receipt of the order. The appeal is allowed to the extent indicated above. This Court makes no order as to costs in view of the close relationship between the parties.