

APHC010469272016



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3365]

FRIDAY, THE TENTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

FIRST APPEAL NO: 264/2016

Between:

Nurukurthi Solman Raju, and Others

...APPELLANT(S)

AND

Nurukurthi Veera Lakshmi and Others

...RESPONDENT(S)

Counsel for the Appellant(s):

1.P SRI RAM

Counsel for the Respondent(s):

G.RAMA GOPAL

SUBMITTED FOR APPROVAL:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

- | | |
|---|--------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether His Lordship wish to
see the fair copy of the Judgment? | Yes/No |

Dr. V.R.K.KRUPA SAGAR, J

*** HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

+ FIRST APPEAL NO: 264/2016

% 10.05.2024

Between:

Nurukurthi Solman Raju, and Others

...APPELLANT(S)

AND

Nurukurthi Veera Lakshmi and Others

...RESPONDENT(S)

! Counsel for the Appellants : Sri P.Sri Ram

^ Counsel for Respondent No.1 : Sri G.Rama Gopal

< Gist:

> Head Note:

? Cases referred:

(2003) 8 SCC 752

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR
APPEAL SUIT No.264 of 2016

JUDGMENT:

The supreme art is to achieve maximum result with minimum effort. A warring husband, if happens to kill his wife, stands disqualified from inheriting the property of his wife¹. However, an ingenious husband treads the path of killing his live wife on paper and convinces others about his inheritance of her estate and embarked upon alienating the properties of his living wife. The present case depicts the unrighteous positions taken up by the husband and display of ingenuity in reasoning in the hope of deceiving someone. There is clear use of sophistry for misleading by means of specious fallacies exerting to convince on the touch stone of pleadings and burden of proof, though in truth there remained nothing to decide in that respect.

2. This appeal under Section 96 of Code of Civil Procedure (C.P.C.) impugns the judgment dated 30.01.2016 of learned IV Additional District Judge, Kakinada in O.S.No.33 of 2010. Defendant Nos.1 to 3 are appellants herein. The sole plaintiff in the suit is respondent No.1. Defendant Nos.4, 5 and 6 are arrayed as respondent Nos.2, 3 and 4 in this appeal.

3. Sri P.Raghu Ram, the learned Senior Counsel representing Sri P.Sri Ram, the learned counsel for appellants and Sri G.Rama

¹ Section 25 of the Hindu Succession Act, 1956

Gopal, the learned counsel for respondent No.1 submitted arguments.

4. Prefatory facts:

i) The property in dispute is described in plaint schedule by way of item Nos.1 to 4 and they situate in Elakolanu Village of Rangampeta Mandal, East Godavari District.

ii) The marriage between Sri N.Solman Raju and Smt. Veera Lakshmi was solemnized on 09.05.1985. They were blessed with two daughters, namely, Kum. N.Mutya Maduri and Kum. Bhagya Suma. The wife Smt. N.Veera Lakshmi filed O.S.No.33 of 2010 showing her husband as defendant No.1 and her daughters as defendant No.2 and defendant No.3. It is that husband and two daughters who are the appellants herein.

iii) Ex.A.1 is registration extract of registered sale deed dated 27.12.1990. All the items of plaint schedule properties are covered by this document. The plaintiff Smt. N.Veera Lakshmi is the registered owner of the plaint schedule properties as per Ex.A.1. Ex.A.2 is registration extract of registered gift deed dated 07.04.2007 and Ex.A.3 is another registration extract of another gift deed dated 07.04.2007. These two documents were executed by Sri N.Solman Raju. Under Ex.A.2 he donated half of the property covered by Ex.A.1 in favour of his first daughter. Under EX.A.3 he donated the remaining half of the property covered by Ex.A.1 in favour of his another daughter/defendant No.3.

iv) Ex.A.4 is registration extract of possessory agreement for sale-cum-General Power of Attorney dated 23.06.2007 executed by defendant Nos.1 to 3 in favour of defendant No.4. Ex.A.5 is another registration extract of another possessory agreement for sale-cum-General Power of Attorney dated 23.06.2007 executed by defendant Nos.1 to 3 in favour of defendant No.5.

v) Ex.A.6 is registration extract of sale deed dated 27.07.2009 which was executed by defendant No.4 in favour of defendant No.6. Ex.A.7 is registration extract of sale deed dated 27.07.2009 executed by defendant No.5 in favour of defendant No.6. By virtue of these documents, the entire plaint schedule properties had come to be sold out in favour of defendant No.6.

vi) Smt. N.Veera Lakshmi filed O.S.No.33 of 2010 whereunder she questioned all the above referred transactions and in her plaint she sought the following prayer:

“The plaintiff therefore prays that the Hon’ble Court may be pleased to pass a decree

- 1) Declaring the title of the plaintiff over the plaint schedule property as absolute owner.
- 2) Consequently grant vacant possession of the plaint schedule property by evicting the defendants there from.
- 3) Cancel the registered gift deed dt: 07.04.2007 document No.1009 of 2007 executed by the 1st defendant in favour of defendants as null and void in pursuance of the same all the subsequent documents.

- 4) Cancel the registered gift deed dt: 07.04.2007 document No.1009 of 2007 executed by the 1st defendant in favour of 3rd defendant as null and void in pursuance of the same all the subsequent documents.
- 5) Award future profits.
- 6) Award costs of the suit.
- 7) Award such other relief or reliefs as the Hon'ble Court deems fit and proper in the circumstances of the case."

vii) In her plaint she alleged that after her marriage in the year 1985, they lived for some time and thereafter disputes arose and in the year 2005 she was necked out of her house. The plaint schedule properties are her absolute properties under Ex.A.1-registered sale deed as she purchased them out of her stridhana and in the plaint she explained about certain immovable properties she got from her parents and as to how she alienated them and how she furnished sale consideration and purchased property under Ex.A.1. She pleaded that while she was very much alive, her husband/defendant No.1 executed Exs.A.2 and A.3-gift deeds in favour of their children wherein he mentioned that his wife/plaintiff died intestate and therefore, the properties fell upon him and hence he was gifting them. It is further alleged that some time thereafter her husband and daughters together executed Exs.A.4 and A.5 agreements for sale mentioning that she died intestate and therefore the properties belonged to them. She asserted that these are fraudulent transactions created to further harass her and the very fact that she is alive makes it clear that her husband acted against law. Since she was necked out of

the house her husband gained possession of the plaint schedule properties and therefore, she lost her possession. It is in the above referred circumstances, seeking declaration of title and recovery of possession and other reliefs, she filed the suit.

viii) Husband of the plaintiff as defendant No.1 filed his written statement and that was adopted by his daughters/defendant Nos.2 and 3. All the plaint mentioned allegations were denied as false. It is asserted that while the plaintiff is the registered owner of the plaint schedule properties, the consideration was paid by the husband from out of his own earnings and the plaintiff is only a named lender. Defendant No.1 filed an additional written statement and stated that a part of the sale consideration for Ex.A.1 was provided by him and remaining part of the sale consideration was provided by his own father. That Ex.A.1 is a benami transaction and plaintiff is not the real holder of the property. That the property has always been the property of defendant No.1 and it has always been in his possession since 1990 under Ex.A.1 and the suit that is filed in the year 2010 is barred by limitation since defendant No.1 perfected his title by way of adverse possession. He pleaded about the cause of disputes between spouses and related facts and finally sought dismissal of the suit.

ix) The other defendants filed their respective written statements and stated that they are all *bona fide* purchasers for valuable consideration and this is a false litigation brought

collusively by the family consisting of defendant Nos.1 to 3 and plaintiff and sought dismissal of the suit.

5. On the above rival pleadings, learned trial Court settled the following issues and additional issue for trial:

1. Whether plaintiff is entitled for declaration of title and plaint schedule property?
2. Whether plaintiff is entitled for consequential relief of vacant possession?
3. Whether the gift deeds dated 07.04.2007 in favour of defendants 2 and 3 are liable to be cancelled and is null and void?
4. Whether plaintiff is entitled for future profits?
5. Whether D.4 to D.6 are *bona fide* purchasers for valuable consideration?
6. Whether the suit is bad for mis-joinder and non-joinder of proper and necessary parties?
7. Whether this Court has jurisdiction to try the suit?
8. To what relief?

Additional issue:

Whether plaintiff has right to seek cancellation of gift deeds?

6. To sustain their respective contentions, plaintiff testified as PW.1 and her father testified as PW.2 and another individual testified as PW.3 and Exs.A.1 to A.20 were marked. Defendant

No.1 testified as DW.1. Defendant No.2 testified as DW.2. Certain elders testified as DWs.3, 4 and 5 respectively and Exs.B.1 to B.6 were marked.

7. After considering the evidence on both sides and the rival contentions, learned trial Court held all the issues in favour of the plaintiff and against the defendants. It granted all the reliefs that were prayed in the plaint.

8. Aggrieved by the above said judgment, defendant Nos.1 to 3 alone preferred this appeal.

9. The main contention argued by the learned Senior Counsel on behalf of the appellants is that the plaintiff having filed the suit for declaration of title and having pleaded that she purchased plaint schedule properties under Ex.A.1 by virtue of her stridhana she was under a legal obligation to prove her case and she had failed to prove that she had stridhana and had spent it for purchase of property under Ex.A.1 and thereby she failed to prove her title and the suit ought to have been dismissed but the learned trial Court committed an error in declaring her title and decreeing the suit in her favour.

10. As against it, the learned counsel for respondent No.1/plaintiff submits that unlike many suits for declaration of title, the dispute involved in the suit is slightly different and that the plaintiff is admitted to be the registered owner of the plaint schedule properties under Ex.A.1 and the need for filing the suit for declaration was only because of the gift deeds executed by

defendant No.1 in favour of defendant Nos.2 and 3 mentioning that they devolved on them on the death of plaintiff which is an absolute falsehood as the plaintiff is very much alive. The suit never required any enquiry into the fact of nature of consideration that was passed for Ex.A.1. In any event, as the plaintiff is alive and as she is the registered owner of property under Ex.A.1, declaration of her title by the trial Court is fully in accordance with law. At any rate, the contentions raised by the appellants with reference to stridhana even if it is assumed that the same was not proved to the full satisfaction of the trial Court, yet as the appellants/defendant Nos.1 to 3 failed to prove anything contrary to it and failed to sustain their defence by production of necessary evidence with reference to defendant No.1 and his father for supply of sale consideration for purchase of Ex.A.1 property the title of the plaintiff should be taken to have been proved by virtue of high probabilities in the evidence. Learned counsel for respondent No.1 cited ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple***². Learned counsel makes a pointed out reference to paragraph No.30 of the said judgment. The relevant portion of which is extracted here:-

“30. In the present case, the trial court and the first appellate court have noted that the plaintiff has not been able to produce any deed of title directly lending support to his claim for title and at the same time the defendant too has no proof of his title much less even an insignia of title. Being a civil case, the plaintiff cannot be expected to prove his title

² (2003) 8 SCC 752

beyond any reasonable doubt; a high degree of probability lending assurance of the availability of title with him would be enough to shift the onus on the defendant and if the defendant does not succeed in shifting back the onus, the plaintiff's burden of proof can safely be deemed to have been discharged. In the opinion of the two courts below, the plaintiff had succeeded in shifting the onus on the defendant and, therefore, the burden of proof which lay on the plaintiff had stood discharged.....”

11. The points that fall for consideration are:

- 1. Whether the evidence on record did not probabalise that the plaintiff/respondent No.1 had stridhana to purchase property covered by Ex.A.1?**
- 2. In the event of her failure to probabalise the same, whether she ceases to be the owner of the property covered by Ex.A.1 disentitling her to seek declaration of title?**
- 3. Whether the trial Court committed any error of facts and law requiring interference?**

Point Nos.1 to 3:

12. The fact that appellant No.1-Sri N.Solman Raju and respondent No.1-Smt. N.Veera Lakshmi are wife and husband and appellant No.2 and appellant No.3 are their legitimate daughters is not in dispute. The plaint schedule properties are covered by Ex.A.1-registered sale deed dated 27.12.1990. It

stands in the name of respondent No.1-Smt. N.Veera Lakshmi. Thus, she is the registered owner of the plaint schedule properties. The fact that she is the registered owner of the plaint schedule properties is never in dispute before the trial Court as well as here. Exs.A.2 and A.3-gift deeds were executed by appellant No.1 in favour of appellant Nos.2 and 3 respectively. In both the documents, he had mentioned about Ex.A.1 and mentioned that it belonged to his wife Smt. N.Veera Lakshmi and further mentioned that his wife died and because of her death the property devolved on him and therefore he was executing the gift deeds. Thereafter all the appellants together executed Exs.A.4 and A.5-registered agreements for sale-cum-General Powers of Attorneys in favour of defendant Nos.4 and 5 respectively. In both these documents, there are clear recitals mentioning that Smt. N.Veera Lakshmi is the owner of these properties and with full rights she has been in possession and enjoyment of these properties and that in the year 2004 she died intestate and therefore the property was succeeded by the deceased woman's husband and daughters and accordingly, they have executed these agreements for sale. All the above referred documents have been executed by the appellants and the recitals mentioned therein are their former statements. Their former statements do indicate two facts. Fact No.1 - the property absolutely belonged to Smt. N.Veera Lakshmi and she was in possession and enjoyment of it with absolute rights. Fact No.2 - that the said owner and possessor Smt. N.Veera Lakshmi died. As Smt. N.Veera Lakshmi filed the suit and as it is now undisputed

that she is alive, the earlier statement about her death made in the above documents is a clear falsehood consciously mentioned by the appellants in those documents. The recitals in those documents which are the former statements of these appellants in all clear and categorical terms admit the ownership and possession of respondent No.1-Smt. N.Veera Lakshmi. Thus, till the date of filing of the suit by Smt. N.Veera Lakshmi, it has always been the demonstrated conduct of these appellants that the property is absolutely owned and possessed by Smt. N.Veera Lakshmi. It is for the first time these appellants through their pleadings denied the title of her stating that the sale consideration was supplied by appellant No.1 from his own earnings and also from the help rendered by father of appellant No.1. It shall be stated that before the trial Court as well as in this appeal the appellants are bound to explain the contradiction between their former statements in those documents and their pleadings in written statement. I must say that unable to offer any explanation in that regard they have not chosen to put forth any argument in this regard. Be that as it may. Exs.B.1 to B.6 of appellants do not indicate the income of appellant No.1 and supply of funds by father of appellant No.1 so as to probabalise their contention about supply of sale consideration for Ex.A.1. As against that, the plaintiff as PW.1 and her own father as PW.2 testified to various facts which convinced the trial Court to say that it was respondent No.1/plaintiff who paid the sale consideration and obtained Ex.A.1-registered sale deed. It is true the learned trial Court expressed its opinion that the evidence placed before him

did not really convince him about stridhana since the plaintiff pleaded alienation of properties given to the plaintiff by her father were not demonstrated through documentary evidence. It has to be noticed here that to counter the contentions of her husband and children that she had no money at all and no source of income at all, she had on her behalf exhibited Ex.A.16-registered gift deed dated 06.05.1985 showing that she was made owner of Ac.1.75 cents of land. She also deposed about another Ac.0.50 cents of land she had purchased in the year 1989 and she gave evidence about the revenue that she was earning from these lands. That evidence was supported by her father. Thus, the observation of the trial Court that she paid the sale consideration is based on all probabilities available in the evidence and no error can be pointed out in that regard.

13. Be it noted, the executant/vendor of Ex.A.1 never disputed the sale in favour of respondent No.1/plaintiff. Respondent No.1/plaintiff is the undisputed registered title holder of the suit schedule properties by virtue of Ex.A.1. The appellants are third parties to this document. They have not questioned the validity of Ex.A.1 and thus, they admit Ex.A.1 is valid. They never sued respondent No.1 and they never moved a counter claim seeking that first appellant/defendant No.1 is the title holder and his wife/respondent No.1 is only a benami. Thus, there was no positive move from the appellants. In that view of the matter, even if the contention of the learned Senior Counsel for appellants is accepted that stridhana claimed by respondent No.1

is not proved, that by itself does not defeat her title. Therefore, the order of the learned trial Court in declaring her title and granting her all other reliefs is certainly in accordance with law and facts and it does not require any interference.

14. Before parting with, it has to be stated that the agreements for sale executed by these appellants in favour of defendant Nos.4 and 5 and the sale deeds executed by defendant Nos.4 and 5 in favour of defendant No.6 were all cancelled and in that regard Exs.A.17 to A.20 were exhibited by the plaintiff during the course of trial and at paragraph No.31 the learned trial Court made a mention of all that and consequently defendant Nos.4 to 6 who are respondent Nos.2 to 4 here remained unconnected to the property and the litigation. It is for that reason in this appeal the appellants have shown respondent Nos.2 to 4 as only proforma parties. It may also be noticed here that in the written statements these appellants had pleaded that since 1990 the first appellant alone has been in possession and not his wife. Therefore, he prescribed his title by adverse possession by the time the suit was laid in the year 2010. That is found to be a false plea since his own earlier statements contained in Exs.A.4 and A.5 of the year 2007 clearly show that his wife/respondent No.1 has been in possession and enjoyment of the properties. Thus, by his own showing he had admitted that even in the year 2007 according to him his wife has been in possession of the properties. Therefore, there is absolutely no merit in the evidence of these appellants before the trial Court. Though conscious of all

falsehood they pleaded and litigated before the trial Court, they impertinently carried that frivolity in presenting and prosecuting this appeal. Therefore, the appeal deserves dismissal with costs. All the points are answered against the appellants.

15. In the result, this Appeal is dismissed with costs. Consequently, the impugned judgment dated 30.01.2016 of learned IV Additional District Judge, Kakinada in O.S.No.33 of 2010 shall stand confirmed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 10.05.2024
Ivd

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

APPEAL SUIT No.264 of 2016

Date: 10.05.2024

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