

APHC010081412017



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

[3368]

TUESDAY ,THE NINETEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

FIRST APPEAL NO: 767/2017

Between:

Ravilla Lokanatha Naidu

...APPELLANT

AND

Smt Muneppagari Jamuna

...RESPONDENT

Counsel for the Appellant:

1.O UDAYA KUMAR

Counsel for the Respondent:

1.P GANGA RAMI REDDY

The Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

A.S.No.767 OF 2017

Between:

Ravilla Lokanatha Naidu,
S/o.Ravilla Doraiswamy Naidu,
Hindu, Aged 57 years, Business,
R/o.D.No.19-9-5D, Kakateeya Nagar,
Tiruchanur Road, Tirupati,
Chittoor District.

.... APPELLANT

Versus

Smt.Muneppagari Jamuna,
W/o.Vijaya Kumara Reddy,
Hindu, Aged 55 years, Land Lady,
R/o.D.No.10-10-374,
Kaipala Theertham Road,
Tirupati, Chittoor District.

.... RESPONDENT

DATE OF JUDGMENT PRONOUNCED : 19.03.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

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

B.V.L.N.CHAKRAVARTHI, J.

*** HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ A.S.No.767 OF 2017

% 19.03.2024

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Tirupati, Chittoor District.

.... RESPONDENT

! Counsel for the Appellant

: Sri O.Udaya Kumar

^ Counsel for the Respondent

: Sri P.Ganga Rami Reddy

< Gist:

> Head Note:

? Cases referred:

1. 2024 (1) ALD 106

2. 2014 (2) SCC 269

3. 2019 (6) SCC 82

This Court made the following:

HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

A.S.No.767 OF 2017

J U D G M E N T:

Heard Sri O.Udaya Kumar, learned counsel for the appellant/plaintiff and Sri P.Ganga Rami Reddy, learned counsel for the respondent/defendant.

2. This appeal filed U/s.96 of Code of Civil Procedure, 1908 (hereinafter referred to as 'C.P.C.') by the unsuccessful plaintiff challenging the judgment and decree dated 03.09.2016 delivered in O.S.No.8/2007 on the file of IV Addl.District Judge, Chittoor District, at Tirupati.

3. For the sake of convenience, the parties are referred to as parties before the Trial Court.

4. The suit was filed to declare that the plaintiff is the absolute owner of the plaint 'A' and 'B' schedule properties, and for permanent injunction restraining the defendant, and her men from interfering with the possession and enjoyment of the plaintiff over the plaint schedule properties, and for costs of the suit.

5. (a) The case of the plaintiff is that the land in an extent of Ac.0-98 cents in S.No.86/2 of Tirupati belonged to Sr Chintam Setty

Srinivasulu Setty; He had a son by name Sri Ankanna Setty and five daughters; They are 1) Sundaramma, 2) Venkataratnamma, 3) Kuppamma, 4) Kanthamma and 5) Savithramma; Sri Chintam Srinivasulu Setty executed a registered Will dated 24.01.1962 bequeathing his properties to his son and daughters; He bequeathed Ac.0-98 cents in S.No.86/2 of Tirupati to his daughters; Sri Chintam Srinivasulu Setty died 40 years ago; Therefore, his five daughters, who are the beneficiaries under the Will become owners; By 1995, Ac.0-29 cents, out of Ac.0-98 cents remained with the daughters; Smt.Sundaramma was no more; Her legal heirs got Ac.0-05 cents out of Ac.0.29 cents of the land; The other four sisters retained Ac.0-24 cents; Smt.Venkataratnamma and other three sisters alienated Ac.0-11 cents out of Ac.0-24 cents to the defendant under a registered sale deed dated 28.04.1995; They retained the remaining Ac.0-13 cents; The legal heirs of Smt.Sundaramma alienated Ac.0-05 cents to the defendant under a registered sale deed dated 31.07.1995; Thereby, the defendant became owner of Ac.0-16 cents in S.No.86/2 of Tirupati;

(b) The plaintiff purchased remaining Ac.0-13 cents of the land from Smt.Venkataratnamma and others under two registered sale deeds dated 19.12.2006 and 20.12.2006 respectively; The plaint 'A' and 'B' schedule properties are covered by the two sale deeds;

(c) On 03.02.2007 at about 11.00 a.m. the plaintiff getting the land levelled for construction; The defendant and her men tried to trespass into the suit schedule property i.e., 'A' and 'B' schedule properties; Hence, the plaintiff filed the suit for declaration of title over plaint 'A' and 'B' schedule properties, and permanent injunction restraining the defendant and her men, from interfering with the possession of the plaintiff.

6. The defendant filed written statement contending that she purchased Ac.0-11 cents vide registered sale deed dated 28.04.1995 from Smt.Venkataratnamma and her sisters; She also purchased Ac.0-05 cents from the legal heirs of Smt.Sundaramma vide registered sale deed dated 31.07.1995; thereby, the defendant became owner of Ac.0-16 cents in S.No.86/2 of Tirupati; The plaintiff purchased land running from east to west 105 feet length and north to south 20 feet width from Sri. A.Venkataramana Prasad and others; The vendors of the plaintiff had no title to sell the said land; The plaintiff and his vendors created the sale deed dated 20.12.2006 to grab the property of the defendant; Therefore, the plaintiff has no title to the suit schedule property.

7. The trial Court basing on the pleadings, settled the following issues for trial:

1. Whether the plaintiff is the owner of the plaint 'A' and 'B' schedule properties?
2. Whether the plaintiff is entitled for permanent injunction as prayed for?
3. To what relief?

8. Before the Trial Court, the plaintiff was examined as P.W-1, and another witness was examined as P.W-2. Five documents were marked as Exs.A-1 to A-5 respectively. Ex.A-1 is the copy of the registered will dated 12.01.1962 executed by Sri Ch.Srinivasulu Setty. Ex.A-2 is registration extract of the sale deed dated 28.04.1995 executed by Smt.A Venkatratnamma and others for Ac.0-11 cents in favour of the defendant. Ex.A-3 is the registration extract of the sale deed dated 31.07.1995 executed by Sri V.Venkataramana Prasad and others for Ac.0-05 cents in favour of the defendant. Ex.A-4 is the registered sale deed dated 19.12.2006 executed by Smt.A.Venkataratnamma and others in favour of the plaintiff (plaint 'A' schedule) and Ex.A-5 is the sale deed dated 20.12.2006 executed by Smt.A.Venkataratnamma and others in favour of the plaintiff (plaint 'B' schedule).

9. On behalf of the defendant, she was examined as D.W-1 and examined another witness as D.W-2. Three documents were filed for the defendant. They were marked as Exs.B-1 to B-3 respectively. Ex.B-1 is the registered sale deed dated 28.04.1995 executed by

Smt.A.Venkataratnamma and others in favour of the defendant for Ac.0-11 cents. Ex.B-2 is the registration extract of sale deed dated 31.07.1995 executed A.Venkataramana Prasad and others in favour of defendant for Ac.0-05 cents, and Ex.B-3 is a rough sketch.

10. The learned Trial Judge considering the evidence, on issue No.1 held that the plaintiff is not entitled for the relief of declaration. On issue No.2 held that the plaintiff also not entitled to the relief of permanent injunction, and dismissed the suit without costs.

11. Aggrieved by the judgment and decree of trial Court, the plaintiff preferred the appeal on the following grounds:

1. The judgment and decree of trial Court is contrary to law, and weight of evidence;
2. The trial Court failed to appreciate properly the contents of Exs.A-1 to A-5 and oral evidence of P.Ws-1 and 2;
3. The trial Court failed to see that the defendant purchased only Ac.0-16 cents, out of Ac.0-29 cents in S.No.86/2 held by the daughters of Sri Ch.Srinivasulu Chetty and that the remaining land of Ac.0-13 cents was later sold to the plaintiff vide Exs.A-4 and A-5, covering plaint 'A' and 'B' schedule property;

12. The learned counsel for plaintiff would submit that there is no dispute about the fact that Sri Chintam Setty Srinivasulu Chetty

bequeathed Ac.0-98 cents of land in S.No.86/2 of Tirupati in favour of his five daughters under Ex.A-1 will; Out of Ac.0-98 cents, the daughters of late Sri Srinivasulu Chetty retained Ac.0-29 cents by 1995, Ex.A-2 sale deed was executed in favour of the defendant and Ex.A-2 sale deed would further established that the defendant for Ac.0-11 cents only, out of Ac.0-24 cents by Smt.A.Venkataratnamma and her three sisters; Ac.0-05 cents of land was retained by the legal heirs of another daughter Smt.Sundaramma; Therefore, Smt.A.Venkataratnamma and other three sisters were having Ac.0-13 cents in S.No.86/2; The defendant purchased Ac.0-05 cents of land in S.No.86/2 from the legal heirs of Smt.Sundaramma represented by Sri A.Venkataramana Prasad and others; vide Ex.A-3 sale deed dated 31.07.1995; Therefore, the defendant was in possession of Ac.0-16 cents; Ex.A-2 would establish that the southern boundary is the land of Smt.A.Venkataratnamma and others i.e., remaining Ac.0-13 cents of land. The plaintiff purchased the said land from Smt.A.Venkataratnamma and others vide sale deeds dated 19.12.2006 and 20.12.2006 respectively, and thereby, he is in possession of the suit schedule land i.e., plaint 'A' and 'B' schedule properties, and therefore, the plaintiff proved his title and possession over the suit schedule land.

13. He would further submit that the learned trial Judge erroneously ignored admission of D.W-1 in the cross-examination that the land belonging to her vendor i.e., Smt.A.Venkataratnamma and others is situated towards south of the property purchased by her under Ex.A-3, and she also admitted that the recitals including boundaries covered by Ex.A-2 and Ex.A-3 are correct; In those circumstances, the reasons assigned by the learned trial Judge to dismiss the suit are contrary to the evidence.

14. The learned counsel for defendant would submit that the plaintiff clandestinely brought Exs.A-4 and A-5 into existence colluding with the vendors of the defendant to grab the land of the defendant, though the vendors of the plaintiff had no land as described in Ex.A-4 and Ex.A-5 sale deeds. He would further submit that the plaintiff did not examine the vendors to establish that his vendors had title and possession over the land covered by Exs.A-4 and A-5 sale deeds. He would further submit that in a suit for declaration of title and permanent injunction, the burden is on the plaintiff to establish the title and possession, and cannot rely on the weaknesses in the case of the defendant, and the suit cannot be decreed basing on the weaknesses in the case of the defendant; In the case on hand, the plaintiff failed to establish his title and possession over the suit

schedule land, and therefore, the learned trial Judge rightly dismissed the suit.

15. In the light of above contentions, the points that would arise for consideration in the appeal are as under:

1. Whether the plaintiff is having title and possession over plaint 'A' and 'B' schedule properties?
2. Whether the plaintiff is entitled to the relief of declaration of title and permanent injunction as prayed for?
3. To what relief?

16. **POINTS No.1 & 2:**

The contention of the plaintiff is that one Sri Chintham Setty Srinivasulu Chetty is the owner of Ac.0-98 cents of land in S.No.86/2 of Tirupati. He bequeathed the same to his five daughters namely Sundaramma, Venkataratnamma, Kuppamma, Kanthamma and Savithramma vide a registered will dated 24.01.1962. Ex.A-1 is copy of will executed by Sri Chintham Setty Srinivasulu Chetty. Perusal of Ex.A-1 would show that Sri Chintham Setty Srinivasulu Chetty bequeathed Ac.0-98 cents of land in S.No.86/2 of Tirupati to his five daughters.

17. It is the case of the plaintiff that the daughters of Sri Chintham Setty Srinivasulu Chetty left with Ac.0-29 cents of land in S.No.86/2 of Tirupati by 1995. The pleadings or evidence on record do not throw any light on the details of alienations made by them with respect to Ac.0-69 cents. The plaintiff relying on Ex.A-3 sale deed executed by Smt.A.Venkataratnamma and others in favour of the defendant to say that the daughters of Sri Chintham Setty Srinivasulu Chetty were having only Ac.0-29 cents of land on the date of Ex.A-2 i.e, 1995. The defendant admits that she purchased Ac.0-11 cents of land in S.No.86/2 from Smt.A.Venkataratnamma and others on 28.04.1995 vide Ex.A-2/Ex.B-1, which is original of Ex.A-2.

18. The case of the plaintiff is that Ac.0-05 cents of land was given to the legal heirs of Smt.Sundaramma and they executed sale deed in favour of the defendant vide Ex.A-3. The defendant also admits that she purchased Ac.0-05 cents of land from Sri A.Venkataramana Prasad and others under Ex.A3/B-2. Ex.A-2/Ex.B-1 executed by Smt.A.Venkataratnamma, L.Kanthamma and R.Kuppamma in favour of the defendant would show that the vendors acquired title to the property under will dated 24.01.1962 executed by Sri Chintham Setty Srinivasulu Chetty and under a sale deed dated 06.09.1985 executed by Smt.K.Savithramma. The extent of land as per schedule is Ac.0-29

cents including share of Smt.Sundaramma, and the joint share of vendors is Ac.0-24 cents towards 4/5 share. It would further show that the vendors alienated Ac.0-11 cents to the defendant, out of Ac.0-24 cents and they retained Ac.0-13 cents of land. As per schedule, the land on southern boundary was retained by the vendors.

19. But, coming to Ex.A-3/B2, it would show that it was executed by Sri A.Venkataramana Prasad and others in favour of the defendant on 31.07.1995. The said property is located in S.No.86/2 of Tirupati and came to the vendors towards share of Smt.Sundaramma out of Ac.0-29 cents. The recitals pertaining to boundaries would show that land on Northern side belongs to the defendant i.e land covered by ExA2/B1; Southern side land belongs to Smt.A.Venkataratnamma and others. The extent of land alienated is Ac.0-05 cents. Therefore, the land alienated under Ex.A-3 must locate towards south of the land alienated under Ex.A-2/B1. Therefore, question of the plaintiffs vendors possessing land on southern side of land alienated under ExA2/B1 is not possible. It is not the case of the plaintiff that boundaries mentioned in that sale deed are wrong.

20. The plaintiff case is that he purchased the remaining Ac.0-13 cents of land from Smt.A.Venkataratnamma and her two sisters. The plaintiff examined himself as P.W-1. In the chief-examination he

restated the plaint averments. In the cross-examination, he admitted that the defendant purchased property under Ex.A-2 and Ex.A-3 sale deeds. Subsequently, the plaintiff purchased property under Ex.A-4 and Ex.A-5. The plaintiff also admitted that the defendant purchased Ac.0-11 cents under Ex.A-2 and Ac.0-05 cents under Ex.A-3. He also admitted that there is no dispute with regard to Ac.0-11 cents, and that dispute is only about the Ac.0-05 cents purchased by the defendant. This is statement is the crux of the issue. The plaintiff case is that his vendors retained land on south of ExA2/B1. Where as ExA3/B2 falsifies said contention. ExA3/B2 is a later to ExA2/B1. It shows that northern side property belongs to the defendant. It means the property covered by ExA2/B1. The defendant purchased property of 0.05 cents in 1995 from legal heirs of Smt Sundaramma. This was not questioned by vendors of the plaintiff. On the other hand the plaintiff in the chief-examination stated as under:

“It is worth mentioning that the owner on the southern side in the said sale deed was shown as Venkataratnamma and others; the defendant by virtue of said document, took possession of the said extent of Ac.0-05 cents and became the owner for entire extent of Ac.0-16 cents on the northern side which formed contiguous block and there remained the balance extent of Ac.0-13 cents on the southern side which absolutely belonged to Smt.A.Venkataratnamma and her sisters.”

21. The plaintiff by above statement made attempt to say that the land covered by Ex.A-3 sale deed is located on the northern side of the land covered by Ex.A-2 sale deed and that the land on the south side of Ex.A-2 sale deed belongs to Smt.A.Venkataratnamma i.e., Ac.0-13 cents of land. As already stated above, the plaintiff categorically admitted that the dispute is with regard to Ac.0-05 cents of land purchased by the defendant under Ex.A-3. Therefore, the plaintiff shall explain how the legal heirs of Smt.Sundaramma alienated Ac.0-05 cents of land to the defendant located on the southern side of Ac.0-11 cents of land purchased by the defendant, when it belongs to Smt.A.Venkataratnamma and others.

22. The contention of the plaintiff is that he purchased land located on the southern side of Ex.A-2 from Smt.A.Venkataratnamma and others and as such, claiming title over plaint 'A' and 'B' schedule properties, as if it is Ac.0-13 cents of land retained by Smt.A.Venkataratnamma and others. But, Ex.A-3 contents under which, the defendant purchased Ac.0-05 cents in the year 1995, are against the case of the plaintiff. In those circumstances, the plaintiff shall prove his title and possession over the plaint schedule properties. He cannot rely on the weaknesses in case of the defendant.

23. In a suit for declaration of title, the burden is always on the plaintiff to prove his title to seek a decree for declaration. The plaintiff has to establish not only his title, but also the title of his vendors, particularly, when it is in respect of item of immovable property.

24. Hon'ble Apex Court in **P.Kishore Kumar Vs. Vittal K.Patkar**¹, held that in a suit for declaration of title for permanent injunction, the burden is always on the plaintiff to prove his title. In **Union of India and others Vs. Vasavi Co-operaive Housing Society Limited and others**², Hon'ble Apex Court at para 12 held as under :

“In a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.”

In **Jagadish Prasad Patel (dead) through L.Rs. and another Vs. Shivnath and others**³, Hon'ble Apex Court at para 41 held as under:

“In the suit for declaration for title and possession, the plaintiffs-respondents could succeed only on the strength of their own title and not on the weakness of the case of the defendants-appellants. The burden is on the plaintiffs-respondents to

¹ 2024 (1) ALD 106

² 2014 (2) SCC 269

³ 2019 (6) SCC 82

establish their title to the suit properties to show that they are entitled for a decree for declaration.”

25. The plaintiff did not choose to examine his vendors to establish their title and possession in respect of the property covered by Exs.A-4 and A-5 sale deeds executed by them in favour of the plaintiff. The vendors of the plaintiff are the best witnesses to depose about their title and possession over Ac.0-13 cents of land and to explain the recitals of Exs.A-2 and A-3 sale deeds, as to how the legal representatives of Smt.Sundaramma executed Ex.A-3 sale deed for Ac.0-05 cents of land located on the southern side of the land covered by Ex.A-2 sale deed or its location. It appears that plaintiff for the reasons best known to him, in the year 2005 obtained sale deeds Exs.A4 and particularly Ex.A5, covering the land under Ex.A3/B2 already alienated in the year 1995 in favour of the defendant, and then filed the suit to nullify the same.

26. In the absence of best evidence, i.e., his vendors, the stray admission of defendant that in Ex.A-2 that southern boundary is mentioned as land of Smt.A.Venkataratnamma and others, would not improve the case of the plaintiff to establish his title, in the view of specific recital in Ex.A-3 that the northern land belongs to the defendant. In that view of the matter, this Court is of the considered opinion that the plaintiff failed to prove title and possession over the

HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

A.S.No.767 OF 2017

Note: Mark L.R. Copy
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