

(2014) 07 AP CK 0083

Andhra Pradesh High Court

Case No: Second Appeal Nos. 1187, 1204, 1208, 1209, 1210 and 1214 of 2013 and Civil
Revision Petition Nos. 173, 199 and 231 of 2014

G. Shravan Kumar

APPELLANT

Vs

D. Srinivas

RESPONDENT

Date of Decision: July 18, 2014

Acts Referred:

- Transfer of Property Act, 1882 - Section 55

Citation: (2014) 6 ALD 220 : (2015) 1 ALT 497

Hon'ble Judges: L.N. Reddy, J

Bench: Single Bench

Advocate: S. Ashok Anand Kumar, Advocate for the Appellant; Y. Ratnakar, Advocate for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.

Since these appeals and the revisions are between the same parties, and in respect of same properties, they are disposed of through a common judgment.

2. The appellant owned a three storied building constructed in Plot No. 61 situated at M/s. Hyderabad Asbestos Cooperative Housing Society Limited, Thokatta Village, Secunderabad, carved out of Survey No. 160. He executed three separate sale deeds in respect of each floor, in favour of the respondents, in the year 1939. He filed O.S. Nos. 348, 349 and 350 of 1998 in the Court of III Senior Civil Judge, City Civil Court, Secunderabad, against the respondent, with a prayer to cancel the sale deeds, executed by him in favour of the 1st respondent. It was pleaded that the mother of the appellant was a partner of M/s. Swathi Bharani and Company and that it has run into losses. After death of his mother, the subscribers as well as other persons are said to have pressed the appellant to clear certain dues.

3. He stated that the 1st respondent and his brothers have induced him to execute the sale deeds in respect of the property by stating that it is the only way to keep the property from being proceeded against by the creditors. He further pleaded that exerting pressure, playing fraud and through undue influence, the sale deeds were brought into existence. It was stated that the consideration, mentioned in the sale deeds is fictitious and was not paid at all. He prayed for cancellation of the same.

4. The 1st respondent, on the other hand, filed O.S. Nos. 50, 51 and 52 of 1999 in the same Court, for recovery of possession of the property covered by the respective sale deeds. He pleaded that the property was purchased by him for valuable consideration from the appellant and having received the entire consideration and executing the sale deeds, the latter did not deliver possession thereof.

5. Through separate judgments, dated 31.12.2007, the trial Court dismissed O.S. Nos. 348, 349 and 350 of 1998 and decreed O.S. Nos. 50, 51 and 52 of 1999. Aggrieved by the same, the appellant filed A.S. Nos. 36, 37, 38, 39, 41 and 42 of 2008 in the Court of XX Additional Chief Judge, City Civil Court, Secunderabad. All the appeals were dismissed through judgments, dated 16.07.2013. Hence, these Second Appeals.

6. In the appeals, the appellant filed I.A. Nos. 44, 46 and 48 of 2013 with a prayer to send Ex. A19 for analysis by an expert of handwriting. The applications were dismissed along with the appeals. C.R.P. Nos. 173, 199 and 231 of 2014 are filed by the appellant against the said orders.

7. Sri S. Ashok Anand Kumar, learned counsel for the appellant, submits that the sale deeds were obtained by playing fraud, undue influence and coercion and the same is evident from nominality of the consideration mentioned in respect of the suit schedule properties, situated in a developed locality in Secunderabad. He contends that the fact that the bankers cheque has been issued towards payment of sale consideration and that the same have not been encashed so far, would disclose the nature of the transactions, and the trial Court ought to have set aside the same. He submits that the oral and documentary evidence was sufficient to prove that the sale deeds were tainted with several illegalities. He contends that the orders passed in the E.Ps. are not tenable in law.

8. On the other hand, Sri Y. Ratnakar, learned counsel for the respondents, submits that the appellant sold the property through separate sale deeds to meet the obligation that has arisen on account of the Chit Fund Company and other family necessities. He submits that once a written document is executed and it is registered, any amount of oral evidence to contradict the contents thereof, is impermissible in law. He submits that the only circumstance under which a person can lead evidence to dispute a registered document is when he alleged that he did not execute it, but once the execution is admitted, any evidence to dispute the contents thereof, cannot be accepted. Learned counsel further submits that the

appellant remained in possession of the property, for decades together, even after sale, and his client is entitled, not only to recover the possession of property, but also mesne profits thereof.

9. Two sets of suits came to be filed, as between the same parties. The first set is O.S. Nos. 348 to 350 of 1998 filed by the appellant for cancellation of three sale deeds executed in respect of each floor of the building in the same premises. The second set is O.S. Nos. 50 to 52 of 1999 filed by the 1st respondent for recovery of possession of the suit schedule property as well as for mesne profits.

10. In the first set, the trial Court framed the following issues:

i) Whether the sale deed dated 25.07.1998 entitled to the plaintiff in favour of the 1st defendant is null and void or it was executed in the circumstances stated by the defendant in the written statement?

ii) Whether the plaintiff is entitled to the perpetual injunction as prayed for?

iii) To what relief?

11. In the second set, the following issues were framed.

i) Whether the plaintiffs are entitled to recovery of possession of the suit schedule?

ii) Whether the plaintiffs are entitled to arrears of damages/mesne profits and if so how much?

iii) Whether the plaintiffs are entitled to mesne profits and if so at what rate?

iv) To what relief?

12. It is not clear as to whether common evidence was adduced since separate judgments were rendered, and separate appendices of evidence are annexed to all the judgments.

13. In O.S. No. 348 of 1998 and batch, the appellant himself deposed as PW. 1 and he filed Exs. A1 to A10. On behalf of the respondents, DW. 1 was examined and Exs. B1 to B11 were filed.

14. In O.S. No. 50 of 1999 and batch, PW. 1 was examined and Exs. A1 to A4 were filed and on behalf of the respondents, DWs. 1 to 3 were examined and Exs. B1 was filed and X1 was taken on record.

15. As indicated earlier, the suits filed for cancellation of sale deeds were dismissed and the suits filed for recovery of possession and mesne profits were decreed.

16. In the appeals preferred by the appellant herein, the lower appellate Court framed the following points for consideration:

i) Whether the sale deed dated 25.07.1998 can be declared as null and void?

ii) Whether the plaintiff is entitled for perpetual injunction as prayed for?

iii) To what relief?

17. The entire controversy revolves around the question as to whether the sale deeds marked as Exs. A1 to A3 are liable to be set aside. If the answer to that is in affirmative, the suits filed by the appellant deserve to be decreed and the other set of suits, filed by the respondents, deserve to be dismissed. If the answer is in the negative, the result would be otherwise.

18. The appellant does not dispute the fact that he executed the three sale deeds. However, his contention is that the respondents and his brothers procured the sale deeds by exerting undue influence, playing fraud and resorting to other pressure tactics. When the plea of fraud is raised, it is required to be elaborated explaining the circumstances. The persons, who are acquainted with such facts, must be examined as witnesses. In the instant case, the plaint is silent as to the nature of fraud or undue influence that is said to have been played. Even otherwise, except PW. 1, no other witness has spoken about the alleged fraud or undue influence. The inescapable conclusion is that the plea deserves to be rejected.

19. Another ground on which the appellant rested his claim was that the consideration is too meager and no prudent person would sell such a valuable property for that consideration. The respondents pleaded that the sale deeds themselves reflect a consideration of higher amount and what is paid through the Demand Drafts was a fraction of it. To prove that the entire consideration was paid, he not only deposed, but also examined other witnesses. It is not as if the appellant is an illiterate person or is gullible enough to be induced to execute the sale deeds, without receiving consideration. There is no recital in the sale deeds, indicating that any part of the consideration is due.

20. Even if the contention of the appellant that the consideration mentioned in the sale deeds is not paid, it is well known that the only remedy open to him is to file suits u/s 55 of the Transfer of Property Act for recovery of the balance sale consideration. The question of sale deeds being null and void, does not arise on the ground that the consideration is inadequate. The quantum of consideration depends upon the circumstances in which, the sale took place.

21. Across the Bar, it is stated that two decrees in the second batch of suits for recovery of possession were already executed and the appellant is in possession, only on the ground floor. This Court is of the view that the appellant had to sell the property to meet the liabilities that arose out of the Chit Fund business undertaken by his mother. Since the sale was almost in distress, he deserves to be shown some indulgence, even while upholding the validity of the sales. This Court is of the view that the decree in favour of the respondents, in so far as it relates to mesne profits can be set aside and a further consideration of Rs. 5,00,000/- can be ordered, to balance the entire transaction. This is particularly so when the parties are known to

each other. No objection was raised by the parties, when this was indicated during the course of hearing.

22. Hence, the Second Appeals are dismissed upholding the decrees passed by the trial Court. However, the decrees passed in O.S. No. 50, 51 and 52 of 1999 are slightly modified to the effect that the respondents, shall not be entitled to recover the mesne profits and shall pay a further sum of Rs. 5,00,000/- towards further consideration payable to the appellant in case he delivers the vacant possession of the ground floor of the building covered by separate sale deed, within a period of two months from today. In default, he shall forgo this facility. It is also directed that in case any cheques or pay orders issued by the respondents towards payment of consideration under sale deeds have not been presented or encashed as yet, the respondents shall be under obligation to issue fresh cheques for the said amount on returning of the unpresented cheques/instruments.

23. The Civil Revision Petitions are also dismissed being devoid of merits.

24. There shall be no order as to costs.

25. The miscellaneous petitions filed in these Second Appeals and Civil Revision Petitions shall stand disposed of.