

IN THE COURT OF THE VI ADDL. DISTRICT JUDGE :: ANANTAPUR AT GOOTY

Present: Smt. P. Kamala Devi, B. Com., B.L.,

VI Addl. District Judge, Gooty

TUESDAY, THE 12th DAY OF DECEMBER, 2017

APPEAL SUIT No.20 of 2016

Between:-

Thummala Narayana Swamy	...	Appellant/2 nd defendant
AND		
1. Thummala Sreekanthappa	...	1 st respondent/plaintiff
2. A. Eeramma		
3. Ediga Parvathi		
4. Indirani	...	Respondents/defendants 3 to 5

On appeal against the judgment and decree of Senior Civil Judge, Gooty in O.S.No.122/2012 dated 27.04.2016 between:

Thummala Sreekanth	...	Plaintiff
AND		
1. Thummala Uligamma (died)		
2. Thummala Narayanaswamy		
3. A. Eeramma		
4. Ediga Parvathi		
5. Indirani	...	Defendants

This appeal coming on 23.11.2017 for final hearing before me in the presence of Sri R. Rama Kumar, Sri K.V. Ramana Reddy, Sri K. Nagaraju, Sri K. Suresh Chandra and Sri B. Sudarshan Rao, Advocates for the appellant and Sri G. Venkata Reddy and Sri G. Sreekanth Reddy, Advocate for the 1st respondent and respondents 2 to 4 having remained exparte and the matter having stood over for consideration till this day, the Court delivered the following:-

J U D G E M E N T

This Appeal Suit has been filed u/o 41 Rule 1 CPC on behalf of the appellant/defendant No.1 challenging the decree and judgment of learned Senior Civil Judge, Gooty dated 27.04.2016 in O.S.No.122/2012 in decreeing the said suit, with a prayer to set aside the said decree and judgment of trial Court.

2. Appellant and respondents in this appeal are 2nd defendant and plaintiff, defendants 3 to 5 respectively before trial Court in O.S.No.122/2012. To avoid confusion and for the sake of better clarity parties in this appeal are herein after referred to as they were arrayed in O.S.No.122/2012 before trial Court.

3. The case of plaintiff as appearing in the plaint in brief is as follows,

The plaintiff and 2nd defendant are the sons of 1st defendant. The plant schedule property is the self-acquired property of the 1st defendant and she was in possession and enjoyment of the same. The 1st defendant has some other properties at Guntakal. It is

further stated in the plaint that the 1st defendant gifted the plaint schedule property to the plaintiff out of the love and affection on 16.11.2010 under gift deed dated 16.11.2010 which was registered in the office of Sub-Registrar, Guntakal. The plaintiff accepted the said gift and obtained possession of the plaint schedule property on the same day. The gift is unconditional and it has come into force and effected on the date of its execution. The plaintiff and his family members are residing in a portion of the gifted property and he has let out the remaining portion for rent. The plaintiff acquired legal and marketable title to the plaint schedule property by virtue of the said gift deed. No one have right, title and possession over the plaint schedule property except the plaintiff. M. Chennakesavulu, Advocate and B. Mallikarjuna of Guntakal attested the said gift deed. The 1st defendant affixed her left thumb marks on the said deed in the presence of said two attestors. The contents of the said gift deed read over to the 1st defendant by B. Ramanjaneyulu who scribed the gift deed in the presence of attestors. The 1st defendant accepting and agreeing to the contents of the gift deed affixed her left thumb impressions in the presence of said two attestors. The 2nd defendant is a businessman and he is rich and powerful person. The 2nd defendant planned to grab the entire property of the 1st defendant including the plaint schedule property. The 1st defendant had set apart the remaining property of her to the 2nd defendant. The 1st defendant executed a registered gift deed in respect of the remaining property in favour of the 2nd defendant on 02.05.2012. The 2nd defendant has hatched a plan to create troubles to the plaintiff and to knock away the plaint schedule property and in pursuance of the same he took the 1st defendant to the office of Sub-Registrar, Guntakal on 02.05.2012 to obtain gift deed in his name and on the same day the 2nd defendant got a gift cancellation deed executed by the 1st defendant cancelling and revoking gift deed dated 16.11.2010. The said gift cancellation and revocation deed has no legal validity and it is not worth the paper on which it was written. The 1st defendant has no right to cancel the gift deed dated 16.11.2010 as she gifted the plaint schedule property unconditionally. The reason assigned for cancellation of the gift deed in the said gift revocation deed are false. The plaintiff never made an attempt to transfer and alienate the plaint schedule property to anybody. The 1st defendant has no right over the plaint schedule property as she gifted the same to the plaintiff and as the plaintiff obtained possession of the plaint schedule property on the same day.

4. The 1st defendant filed her written statement admitting her relationship with the plaintiff and 1st defendant, admitting her ownership over the plaint schedule property,

admitting execution of cancellation of the gift deed and denying the other averments of the plaint. The 2nd defendant adopted the written statement of the 1st defendant.

The plea of 1st defendant as appearing in the written statement in brief is that,

It is true that the plaintiff and the 2nd defendant are the sons of the 1st defendant and Thummala Bheemappa. The 1st defendant is the rightful and lawful owner of the plaint schedule property as the plaint schedule property is her self-acquired property and she has been in possession and enjoyment of the same. The gift deed dated 16.11.2010 on which the plaintiff relied is not binding on the 1st defendant. The 1st defendant and the plaintiff lived together after the marriage of the 2nd defendant and daughters. The 1st defendant fell sick and became old and depending on the plaintiff for everything. Taking advantage of the physical and mental condition of the 1st defendant, the plaintiff took the 1st defendant on one day saying that he would be taken to doctor. To meet the expenses of the doctor and medical treatment, the plaintiff asked the 1st defendant to mortgage the plaint schedule property to Canara Bank so that he would bear her medical expenses and the mortgage debt would be discharged after repayment from the amounts accrued by way of rents. But the 1st defendant came to know that the plaintiff suppressing all the said facts obtained gift deed instead of mortgage deed and started to dispose off the property. The plaintiff played fraud on the 1st defendant. The contents of the gift deed are not read over and explained to the 1st defendant. The 1st defendant has not seen the attestors of the said gift deed at any point of time. The 1st defendant never intended to gift the plaint schedule property. Therefore, the 1st defendant approached the document writer and asked him to execute the cancellation deed. The 1st defendant has been paying municipal tax on the plaint schedule property. The 1st defendant never intended to transfer the plaint schedule property in favour of the plaintiff. The gift deed filed by the plaintiff is a created document taking the old age, physical condition and confidence reposed by the 1st defendant on the plaintiff. The suit is not maintainable. Therefore, the suit is liable to be dismissed with costs.

5. Considering the aforesaid pleadings the following issues were settled for trial by the trial Court,

1. Whether the plaintiff is entitled to the relief of declaration and cancellation of the revocation deed dated 02.05.2012 as prayed for?
2. Whether the gift deed dated 16.11.2010 is true, valid and binding on the defendants as prayed for?
3. To what relief?

The plaintiff sought relief of consequential permanent injunction restraining the defendants and their men from interfering with his possession of the plaint schedule property. But, no specific issue is framed in this regard. Hence the following additional issue is framed.

Whether the plaintiff is entitled to consequential permanent injunction as prayed for?

6. To substantiate the case of plaintiff, plaintiff was examined as P.W.1 and his witnesses were examined as P.Ws.3 and 4 and got marked Exs.A.1 to A.18. The affidavit of B. Mallikarjuna in lieu of chief examination of P.W.2 was filed on behalf of the plaintiff but the chief examination of P.W.2 was eschewed.

To substantiate the case of defendants, 2nd defendant was examined as D.W.1. No documents were marked on behalf of 2nd defendant.

7. Considering the aforesaid oral and documentary evidence the learned Senior Civil Judge, Gooty decreed the said suit without costs by his judgment dated 27.04.2016.

8. Having aggrieved by said decree and judgment of trial Court in O.S.No.122/2012, appellant/2nd defendant preferred this appeal suit challenging the said decree and judgment of trial Court on the following grounds,

(1) The learned trial Judge failed to consider the 1st respondent failed to prove his case by producing cogent and reliable evidence as such should have dismissed the suit.

(2) The observation made by the trial Court that there is no dispute regarding identification of plaint schedule properties is not correct. The identity of the property shown in the plaint schedule and the evidence given by P.W.1 are at variance as such the 1st respondent is not entitled for the relief prayed for.

(3) The trial Court should have seen that 1st respondent being son and 1st defendant being mother is relationship who is in a position to active confidence and that where the 1st respondent had an advantage to get Ex.A.1 gift deed should have proved good faith in transaction of Ex.A.1 between him and 1st defendant.

(4) The trial Court should have seen that the written statement filed by the 1st defendant was a statement consisting of relevant fact of present dispute and 1st defendant was died, as such the statement filed by 1st defendant should have consider Section 32 of Evidence Act.

(5) The trial Court should have disbelieved the evidence of P.Ws.3 and 4 as both of them are not speaking truth.

(6) The trial Court should have seen that Ex.A.1 is a void document as she has not executed the said document voluntarily. As such she executed Ex.A.2 document.

(7) The trial Court ought to have dismissed the suit, the plaintiff has not come to the Court with clean hands as such it should have dismissed the suit.

Cross objections filed by 1st respondent herein are as follows,

(1) The learned judge erred in not awarding costs of the suit to the plaintiff having decreed the suit without asking any reason for not allowing costs of the plaintiff since costs should follow the event.

(2) The lower Court ought to have awarded costs to the plaintiff incurred by him in filing the suit in view of the conduct of the 2nd defendant in pressuring contentious litigation against his own brother and subject him to mental harassment and torture.

(3) The lower Court ought to have seen that there are no justifiable grounds to disallow costs to the plaintiff which he incurred without assigning any reason in the judgment.

9. Now the points for determination are,

- (1) Whether the trial Court committed any error either in appreciating oral and documentary evidence brought on record or in recording finding on any material aspects and that the decree and judgment is liable to be set aside?*
- (2) Whether trial Court committed any error in not awarding the costs in favour of plaintiff while decreeing the suit in his favour?*
- (3) To what relief?*

10. Heard both sides. The learned counsel appearing for appellant submitted in his arguments contending as follows,

The trial judge dismissed the suit with a finding that the 1st respondent/plaintiff failed to prove his case by producing cogent and reliable evidence by giving reason on each issue separately. The trial Court should have seen the written statement filed by the 1st defendant which shows that she had not executed gift voluntarily. If it is so the burden lies on the plaintiff/1st respondent to prove the execution of gift deed, but the trial Court wrongly placed burden of proof on defendants 1 and 2. The 1st defendant who is mother of the plaintiff and who is in position of active confidence as such plaintiff had an advantage to get gift deed as such the plaintiff has to prove that there is no undue influence in execution of Ex.A.1 by 1st defendant and she executed it voluntarily and knowing its contents. As the 1st defendant died during the pendency of the suit the trial Court should have considered her written statement as evidence u/s 32 of Evidence Act. But the trial Court failed to consider the same. There are so many contradictions in the evidence of P.Ws.3 and 4 and P.Ws.3

and 4 are the interested witnesses. As such the trial Court should not consider their evidence, but believed the evidence of P.Ws.3 and 4. The trial Court should have declare Ex.A.1 document is a void document, but the trial Court considered the said document as valid in passing the judgment in favour of the plaintiff depending upon the weakness of appellant as such it is liable to be set aside and dismissed the suit.

11. On the other hand the learned counsel appearing for 1st respondent submitted his arguments contending as follows, the recitals in Ex.A.2 revocation deed and the pleadings in the written statement filed by D.1 are not consistent. The recitals in Ex.A.2 clinchingly establishes that the 1st defendant admitted that she executed the gift deed and delivered the possession of the property to the plaintiff. If it is so, there is no necessity to prove the validity of Ex.A.1 by examining the attestors as the 1st defendant cancelled Ex.A.1 gift deed without notice and consent of plaintiff, unilaterally. The trial Court correctly gave finding that Ex.A.2 is not valid and declared title of the plaintiff over the plaint schedule property basing on Ex.A.1 gift deed. The trial Court also correctly opined that the burden of proving undue influence or fraud in getting Ex.A.1 document is on the defendants taking into consideration of citations relied upon by the plaintiff. Hence, there are no irregularities either in appreciation of evidence or giving findings by the trial Court in the judgment in O.S.No.122/2012. Thus he prays to dismiss the appeal by confirming the judgment of the trial court in O.S.No.122/2012, dated 27.04.2016. The learned counsel for respondent further contended that the lower Court while decreeing the suit has to award the costs, but erred in disallowing the costs in favour of respondent. Therefore he prays to allow his cross objections and award costs by decreeing the suit and dismiss the appeal filed by the appellant.

12. POINT No.1:- As seen from the record it appears that the plaintiff in the main suit examined himself as P.W.1 besides examining one of the attestors and scribe of the gift deed as P.Ws.3 and 4 and marked Exs.A.1 to A.8 before the trial Court. 2nd defendant himself examined as D.W.1. No documents marked. 2nd defendant adopted the written statement filed by the 1st defendant. Defendants 3 to 5 are added subsequent to the death of 1st defendant. As per the contents mentioned in the written statement of 1st defendant it is the case of 1st defendant that to meet the expenses of the doctor and medical treatment the plaintiff asked her to mortgage the plaint schedule property to Canara Bank and she came to know that the plaintiff suppressing the said facts obtained the gift deed instead of mortgage deed. Thus plaintiff played fraud on the 1st defendant. Her further contention is

that the contents of gift deed are not read over and explained to her and she never intended to gift the suit schedule property. Thus she executed the cancellation deed. As seen from the recitals of Ex.A.2 which is cancellation of gift deed which is executed by D.1 on 02.05.2012, it is mentioned in the document that she executed the gift deed in favour of Thummela Sreekanthappa who is her second son and delivered possession to him. But she came to know that her son is trying to alienate the property with an intend to stop the alienation, she executed the cancellation of gift deed voluntarily without instigation of others. As per recitals in Ex.A.2 it makes clear that 1st defendant herself admitted the execution of gift in favour of plaintiff and delivering the possession of the same to the plaintiff. If really the plaintiff obtained Ex.A.2 document by misrepresentation or by playing fraud or by taking undue influence as pleaded in the written statement of 1st defendant, the same should be reflected in Ex.A.2 document. So the recitals in Ex.A.2 document itself falsifies the entire case of 1st defendant regarding fraud or misrepresentation or undue influence in obtaining Ex.A.1 document by plaintiff and it further proves the execution of Ex.A.1 document in favour of plaintiff. As per the Evidence Act admitted facts need not be proved. So there is no necessity to the plaintiff to prove Ex.A.1 document.

13. In Pagadala Bharathi and another v. J. Radha Krishna (2013(2) ALD 373) the Hon'ble High Court observed that when executant himself admits execution, there is no need for calling of any other attestors to prove the same. It was further observed that the registered gift deed produced from custody of 1st defendant therein and it was produced and thus u/s 123 of Transfer of property Act is as property is capable of and custody of that original document with 1st defendant therein is an acceptance of the same. In the present case on hand Ex.A.1 gift deed is in the custody of plaintiff as he filed it before the Court. Thus it can be safely concluded that the gift was accepted by the plaintiff u/s 123 of Transfer of Property Act and that there is no need to prove the execution of gift as executant i.e., D.1 herself admitted about the execution in Ex.A.2 document, in view of observations and findings in the above decision.

14. Now we have to see whether the cancellation of gift deed i.e., Ex.A.2 is valid and binding on the plaintiff or not?

15. As per the Section 126 of Transfer of Property Act revocation of gift is not permissible unless conditions subsequent attached to gift from happening of gift shall determined. If there is no such condition, the gift is not revocable. When once the gift or settlement deed was executed by donar he or she cannot unilaterally execute any

revocation deed for revoking the gift or settlement deed executed by him/her and if he or she executed the same it is not binding on the donee. Same was observed in Smt. Syamala Raja Kumari & Ors. Vs. Alla Seetharavamma & Anr. (2017 (1) L.S. (Hyd.) 360).

16. Unilaterally cancellation of gift deed is void and that if any party wants to cancel the document executed by him the natural remedy is by way of civil suit for cancellation, but no cancellation deed can be unilaterally executed or registered. The same was held in Haji Mohammed Ahmed v. State of Andhra Pradesh and others (2012(2) ALD 230).

17. In view of the observations and findings in the above decisions the 1st defendant herein has to execute the cancellation of gift deed with the consent and participation of plaintiff only or by filing a suit before the Court seeking cancellation of gift deed. But as per the material placed before the Court, it makes clear that the 1st defendant herself unilaterally executed Ex.A.2 cancellation of gift deed. Hence Ex.A.2 document is void document and it is nonest in the eye of law. If it is so, the plaintiff who is claiming title over the suit schedule property under Ex.A.1 document is valid and he is entitled to seek declaration of his title as prayed by him in the plaint. So taking into consideration of this aspects the trial Court gave finding in its judgment that the plaintiff is entitled for relief of declaration of title over the plaint schedule property and for cancellation of gift deed dated 16.11.2010 and answered issue No.1 correctly in favour of plaintiff.

18. In the light of above mentioned circumstances, all the decisions relied upon by the counsel for appellant are not applicable to the present case on hand as the facts and circumstances of the present case and those cases are not one and the same. Thus I hold that there are no irregularities or faults either in appreciating the evidence or giving finding in the judgment of trial Court. Hence there is no need of interference of this Court.

19. Hence, I hold that the trial Court correctly gave finding that the 1st defendant executed Ex.A.1 gift deed in favour of plaintiff and it is true, valid and binding on the defendants by appreciating the evidence and legal position placed by both parties before it discussing at length in its judgment. Accordingly this point is answered.

20. POINT No.2:- As seen from the judgment of lower Court the lower Court decreed the suit without costs giving reason that in the facts and circumstances of the case and also to avoid multiplicity of proceedings. As seen from the pleadings and relation between parties in the suit it makes clear that originally the suit has been filed against the 1st defendant and 2nd defendant who are no other than the mother and brother of the plaintiff. It is an

admitted fact during the pendency of the suit the 1st defendant mother died and her legal heirs were added as D.3 to D.5. The main suit is filed questioning the validity of revocation of gift deed marked under Ex.A.2 which is executed by 1st defendant. When the 1st defendant herself is no more, awarding of costs against her is not justified; as if the costs were awarded by the Court it should be recovered against the estate of deceased 1st defendant. The estate of deceased 1st defendant is supposed to be in the custody of plaintiff and other legal heirs of 1st defendant i.e., defendants 2 to 5 herein. So, no monetary benefit would be get to the respondent herein. On the other hand it leads to further litigation. Hence the trial Court correctly came to the conclusion that to avoid multiplicity of proceedings and in the circumstances of the costs, the suit is decreed without costs. Therefore I am of view that there is no error in not awarding the costs by the trial Court while decreeing the suit in favour of the respondent herein. Hence I am of view that no interference is warranted to modify the judgment of trial Court regarding the costs. Hence I am of view that there are no merits in the cross objections filed by the respondent herein claiming for costs as findings and judgment of trial Court regarding not awarding of costs is holds good. Accordingly this point is answered.

21. POINT No.3:- In view of findings on point No.1 as mentioned above, this appeal suit is liable to be dismissed by confirming the decree and judgment of trial Court dated 27.04.2016 in O.S.No.122/2012 and cross objections filed by 1st respondent herein is liable to be dismissed. Accordingly this point is answered.

22. In the result, this appeal suit is dismissed by confirming the decree and judgment of trial Court dated 27.04.2016 in O.S.No.122/2012 and the cross objections filed by 1st respondent herein is dismissed. In the circumstances of the case both parties shall bear their own costs.

Dictated to Steno, transcribed by him corrected and pronounced by me in the open Court this the 12th day of December, 2017.

*VI Additional District Judge,
Gooty.*