

IN THE COURT OF THE II ADDITIONAL CHIEF JUDGE: CITY CIVIL
COURTS: HYDERABAD

Tuesday, the 23rd day of ***AUGUST, 2016.***

PRESENT : SRI K.SANGA REDDY.,
III ADDITIONAL CHIEF JUDGE
FAC II ADDITIONAL CHIEF JUDGE

O.S.No. 270 of 2010

Between :

P.C.Srinivas Rao

... Plaintiff

A N D

1. P.Viswanatha Rao

2. P.Vasundara

...Defendants

This suit is coming on this 23rd day of August, 2016 before me for final hearing in the presence of Sri D.Jagadishwar Rao, Advocate for the plaintiff and of Sri P.Jaipal Reddy, Advocate for the defendants and the matter having stood over for consideration and this court passed the following :

JUDGMENT

1) This is a suit filed for declaration of the ownership of the plaintiff over the suit schedule property and to declare the gift deed dt. 20.10.2008 executed by the first defendant in favour of the 2nd defendant as void and illegal and also for grant of permanent injunction restraining the defendants from causing interference with the suit schedule property.

2) The plaintiff pleaded that he is absolute owner and possessor of the suit schedule property; house bearing Municipal No.13-6-439/1/A/47, having acquired the same under Will Deed dt. 28.08.2008 executed by one Smt K. Laxmi Devi W/o Ramanarayana Dharne. Originally the suit property belonged to the husband of donor

of the plaintiff and such husband gifted the property to his wife out of love and affection under a gift deed dt.31.12.1993. The said Laxmi Devi constructed the first floor on obtaining due permission from the municipality.

3) The defendant No.2, who is a citizen of U.S. came to India only twice till 2007 and thereafter settled in India. The first defendant assured Smt K Laxmi Devi that he would send sale consideration from U.S and as such assurance got executed a sale deed in his favour without payment of consideration. Ultimately, the first defendant unable to raise funds to pay the amounts executed a registered Gift Deed dt. 12.05.2008 in favour of the said Laxmi Devi, as such she continued to be the owner of the property. The plaintiff, who is the maternal son-in-law of Smt Laxmi Devi was looking after her in providing medicines, food etc., and out of love and affection Smt Laxmi Devi bequeathed he suit schedule property and other properties in favour of the plaintiff under a will dt. 28.02.2008.

4) The said Laxmi Devi died on 01.09.2008 at Hyderabad. Thereafter the plaintiff became the absolute owner of the property and enjoying the same without any interruption. The defendant No.1 with an dishonest intention to knock away the suit schedule property executed a registered gift deed dt. 23.10.2008 in respect of 50% of undivided share of the suit schedule property in favour of his wife the second defendant without any right over it and the defendants are causing interference with the possession of the plaintiff over the property.

5) The defendant No.1 filed the written statement adopted by the 2nd defendant denying the suit claim and denying the para-wise pleadings of the plaintiff. Further contended that, the said Laxmi Devi never trusted the plaintiff and that the plaintiff had forcibly occupied the property at Fasalwadi village and she never bequeathed her properties under any will in favour of the plaintiff. The plaintiff is a mischievous person and created some papers while the defendant was in U.S.A. Plaintiff also managed the revenue officials for getting wrong entries. The defendant has also filed a suit for partition and separate possession of his share in ancestral properties. The said Laxmi Devi was admitted to the hospital on 27.08.2008 and discharged on 31.08.2008 on the next day there-after she died. She was not acquainted with the English language and was in critical condition and was struggling for life during the relevant period.

6) Basing on the above pleadings of both sides, the following issues were framed.

1. Whether the sale deed dt. 22.12.2004 is not supported by sale consideration?
2. Whether Gift Deed dt. 12.05.2006 standing in the name of Smt Lakshmi Devi is nominal and what is its binding nature on defendants?
3. Whether the Will dated 28.08.2008 allegedly executed by Lakshmi Devi is true, valid and binding on defendants?
4. Among the plaintiff and defendants who are in possession at suit schedule property?
5. What is the effect of the other suit OS No.20 of 2010 on the file of V Add. District Judge, Medak District at Sanga Reddy on the

present suit?

6. Whether the plaintiff is entitled for declaration of title over the suit schedule property?
7. Whether the Gift Deed between defendants is valid and binding on plaintiff?
8. Whether court fee paid is proper?
9. Whether the plaintiff is entitled for perpetual injunction as prayed for against defendants?
10. To what relief?

7) At the time of trial both parties have adduced oral and documentary evidence through Pw.1 & Pw.2, Dw.1 Ex A.1 to A.13 and Ex B.1 to B.11.

8) On closure of the evidence hear the arguments both sides.

9) ISSUE No.1, 2 and 7:- These issues arose as the plaintiff contends that the sale in favour of the first defendant by Smt Laxmi Devi was lacking of consideration, as such the gift was made by the first defendant in favour of the said Laxmi Devi unable to pay the sale consideration and since the defendant No.1 has no title over him the gift by him in favour of the second defendant is null and void. The defendant, however, denied all such adverse averments.

10) Both the plaintiffs as Pw.1 and Power of Attorney of the first defendant as DW.1, however, deposed in support of their respective claims.

11) It is an undisputed fact that the first defendant left for U.S.A in the earlier 1970's and till 2007 he made only three or four visits of

India as deposed by Dw.1 himself in the cross examination. Further the Dw.1 has categorically deposed that the first defendant came to India twice in between the years 2004 and 2007 and he could not however given the days of such visits.

12) When there is a specific plea of the plaintiff that no consideration was passed for the sale deed executed by Smt Laxmi Devi in favour of first defendant also, the DW.1 failed to depose as to the mode of payment of money or the period of payment of money towards sale consideration except making a vague statement that the sale deed was executed only after receipt of entire sale consideration. There appears to be no receipt executed for such purpose filed or exhibited. As seen from the copy of the sale deed by Smt Laxmi Devi in favour of first defendant vide Ex A.2 it is simply mentioned that in consideration of total sum of Rs.8,16,000/- paid already by the vendee the receipt of such sum the vendor admits.

13) Even the sale deed does not discloses as to the mode or dates of payments of money taken towards sale consideration. Obviously for such reason and for non payment of sale consideration the first defendant appears to have re-transferred the suit schedule property under a gift settlement deed dt. 12.05.2008 in favour of the said Smt Laxmi Devi under Ex A.3 gift deed equivalent to Ex B.2. It is pertinent to note that, the Ex B.2 is filed and exhibited by no other than, on behalf of the defendants themselves, still contend that it is only a sham document. In spite of the fact that such document is registered and the original itself is filed and exhibited, the purpose for creating

any such sham document by the defendants is not made known. The cumulative effect of the sale deed in favour of the first defendant and re-transfer of the same property under the gift in favour of the vendor clearly reveal that, the re-transfer was made on account of failure of payment of sale consideration by the first defendant to the said Late Laxmi Devi, as pleaded by the plaintiff.

14) When the first defendant parted with property under gift in favour of other person, he is left with no transferable title with him to alienate the same by way of gift under Ex B.3 equivalent to Ex A.6. As such Ex A.6 equivalent to Ex B.3 gift dt.23.10.2008 does not pass any title in favour of the defendant No.2. The issues are answered accordingly in favour of the plaintiff and against the defendants.

15) ISSUE NO.3, 4 & 6 :- The plaintiff claims title and possession over the suit schedule property by virtue of Will under Ex A.4. The contention of the plaintiff is that he has been attending to the medical needs and otherwise requirement of food etc., for the late Laxmi Devi and out of her love and affection on account of close relation with the plaintiff, she has bequeathed the suit schedule property in favour of the plaintiff under Ex A.4 will deed.

16) The contention of the defendants for denying such will is multi-folded on the grounds that the testator was not acquainted with English language, she was struggling for life during the relevant period and died within a short span of time from the alleged date of will.

17) Undisputedly the testator was suffering from some cancer and

there is no such evidence produced by the defendant that the deceased being suffered by the Testator leads the patient to any kind of informing or inability to create a will. 'Will' is to be proved through the attesting witnesses. The plaintiff not only summoned himself as Pw.1 and spoken about the execution of the will but also adduced the evidence of one K.Srinivasan, who is the attesting witness No.2 for the will in Ex A.4. Such witness examined as Pw.2 has categorically deposed that he knows the deceased Smt Laxmi Devi acquainted with the plaintiff and defendants as well and also their family members. On 28.08.2008 he went to see said Smt Laxmi Devi in the hospital where in presence of the plaintiff and others, the said Smt Laxmi Devi informed him about execution of the Will Deed bequeathing her properties in favour of the plaintiff and she also showed such will deed drafted at her instance. She has executed such will deed in his presence and at her request he has signed as a witness to the will. Pw.2 has also further deposed that another lady by name Smt Savitri, who is related to the deceased also stood as witness to the Will.

18) Pw.2, who has deposed that the execution of the will by testator in his presence in crystal clear terms was cross examined and nothing could be extracted from his cross examination is doubt his testimony. There appears to be sine suggestions that the witness has not seen while the Ex A.4 was prepared on the dictation of Smt K. Laxmi Devi and that the Testator was not any conscious said that the time of executing the Ex A.4 and that he came to know the contents of Ex A.4 only after filing of the suit.

19) The very suggestion that Late Smt K.Laxmi Devi was not conscious at the time of executing the Ex A.4 implied admits such execution of Ex A.4 Will.

20) Even the sole witness on behalf of the defendants Dw.1 in his cross examination has categorically deposed that, in the year 2008 he has gone through the will Deed executed by Smt K. Laxmi Devi. Thus the existence of will executed by the said K.Laxmi Devi is not only proved and substantiated by the oral and documentary evidence on behalf of the plaintiff but also in a way, admitted by the sole witness on behalf of the defendants I.e Dw.1.

21) It is pertinent to note that, this is a case where personal evidence of the defendants is obviously required and the GPA cannot be expected to know everything with regard to the transaction since he has not a witness to the any of the transaction. The Dw.1 has expressed his ignorance or personal knowledge about several aspects including the conversation between the deceased and first defendant when Ex B.1 was executed, about the sale consideration actually agreed upon between the parties thereunder and, also even about the visit of the defendant No.1 to India at the time of execution of Ex B.1 Sale Deed. Therefore the non examination of the first defendant is fatal to the case of the defendant in establishing their rights or destroying the case of the plaintiff with regard to the execution of Will. The defendants themselves, at one stage, pleaded that the plaintiff occupied the property of the said Smt Laxmi Devi which amounts to

admission of possession of the plaintiff over the property. It is also pertinent to note that, the defendant is an American citizen and the possibility of his physical possession over the property unless proved is an imagination. Mere mutation or change of name of the first defendant in the Municipal records or the notice in the name of the first defendant by the municipal authorities in Ex B.4 & B.5 or Ex B.5 to B.7 also the property tax receipt under Ex B.8 dt. 25.06.2005 and other receipts prior to the execution of will I.e Ex B.9 dt. 04.02.2005 and 22.03.2008 by no amounts help the defendant since such records are possible because of the earlier sham document in the nature of sale deed vide Ex B.1 equivalent to Ex A.2. Therefore, the sale deed in Ex A.4 stands proved and the possession of the plaintiff over the suit schedule property also stands proved, therefore, entitled for the declaration sought for. The issues are answered accordingly in favour of the plaintiff and against the defendants.

22) ISSUE No.5 : As far as the pendency of suit in OS No. 20 of 2010 which is said to have been filed for the purpose of partition of property, however, does not have any bearing for the rights or reliefs claimed in this suit. The record in the said suit is also not made part of any documentary evidence in this suit. The issue is answered accordingly.

23) ISSUE No.8 : Except a vague contention of not payment of proper court fee, nothing is placed the record to substantiate the same. The plaintiff is proved to be in possession of the property, as such the issue

stands answered accordingly in favour of the plaintiff.

24) ISSUE NO.9 & 10 : For the answers and findings on issue No.1 to 8 the plaintiff is entitled for the suit claim.

In the result, the suit is decreed declaring that the plaintiff is absolute owner of the suit schedule property and that the gift deed dt. 20.10.2008 executed by the first defendant in favour of the second defendant is void and, granting for permanent injunction restraining the defendants and anybody claiming through them from causing interference over the suit schedule property. There is no order as to costs in the circumstance of the case.

Dictated to the Stenographer Grade I, transcribed and typed by him, corrected and pronounced by me in the open Court, on this the 23rd day of August, 2016.

Sd/-

(K. Sanga Reddy)

FAC II Additional Chief Judge,
City Civil Court, Hyderabad

Appendix of Evidence
Witnesses examined

For the Plaintiff :

Pw.1 : P.C.Srinivas Rao

Pw.2 : K. Srinivasan

For the Defendants :

Dw.1 : A.Venkata Subramanyam

Documents Marked

For the Plaintiff :

Ex A.1 : CC of the registered Gift Deed dt. 31.12.1993

Ex A.2 : CC of the registered Sale Deed dt. 22.12.2004

Ex A.3 : CC of the Registered Gift Deed dt. 12.05.2008

Ex A.4 : Original Will Deed dt. 28.08.2008

Ex A.5 : Death Certificate

Ex A.6 : CC of the Gift Deed dt. 23.10.2008

Ex A.7 : Electricity Bill

Ex A.8 : Telephone Bills

Ex A.9 : Voter Identity Card along with remuneration

Ex A.10 : Notice dt. 23.12.2009

Ex A.11 : Household Card

Ex A.12 : Market Value Certificate

Ex A.13 : Medical Report.

For the Defendants :

Ex B.1 : Original Sale Deed dt. 22.12.2014

Ex B.2 : Original Gift Deed dt. 12.05.2008

Ex B.3 : Original Gift Deed dt. 23.10.2008

Ex B.4 : CC of the Assessment Register from 01.04.1993 to 30.05.2009

Ex B.5 : Letter dt. 11.01.2010

Ex B.6 : Letter dt. 24.01.2005

Ex B.7 : Demand Notice dt. 24.01.2005

Ex B.8 to B.10 : Property Tax receipts

Ex B.11 : Discharge Card

Sd/-

(K. Sanga Reddy)

FAC II Additional Chief Judge,
City Civil Court, Hyderabad