

Rutta Pedda Narasareddy and Others

Vs

Sughra Begum and Others

Civil Appeal No. 2491 of 1968

(D. G. Palekar, A. Alagiriswami JJ)

27.07.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. The plaintiff and the 11th defendant purchased under the sale deed (Exhibit P-3), dated June 5, 1941, about 200 acres of land in Jagdeopur village in Siddipet Taluq of Medak District and about 450 acres of land in Gandamalla in Bhongir Taluq of Nalgonda District for a sum of Rs. 5,000. According to the plaintiff she borrowed Rs. 3,000 from the 11th defendant to enable her to make the purchase and the name of the 11th defendant was included in the sale deed in order to provide security for the amount so advanced by the 11th defendant. There was an oral agreement to that effect prior to the sale and this was reduced to writing under Exhibit P-8. The amount due to the 11th defendant was repaid in 1943 and she was entitled to all the lands. Defendants 1 to 10 dispossessed the plaintiff of the suit lands during the disturbances preceding the Police Action in the old Hyderabad State in 1948. The defendants contended that the sale deed represented the true state of facts and the 11th defendant was entitled to half of the property and that the plaintiff and the 11th defendant entered into an oral agreement with defendant No. 1 and defendant No. 7, as a result of which Defendants 1 to 10 were taken as tenants from 1945 till 1948, that they later became vendees and that they were protected tenants under the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950. The 11th defendant supported the Defendants 1 to 10 in their contentions. The trial Court held that the 11th Defendant was entitled half of the lands, that the verbal agreement pleaded by the plaintiff was not proved. That there was no satisfactory evidence regarding the execution of Exhibit P-8, and that the repayment of the loan by the plaintiff was not proved. It, however, held in respect of the Jagdeopur land that the plaintiff alone was in possession of the suit lands till 1948. It further held that the defendant No. 1 is a protected tenant and the Civil Court is debarred from going into the validity of the tenancy certificate, and the plaintiff cannot evict him with regard to 277 acres and 20 guntas. The High Court on appeal after an exhaustive appraisal of the evidence held that the plaintiff's contention regarding the interest of the 11th defendant in the sale deed was true. It agreed with the trial Court that plaintiff alone was in actual possession of the Jagdeopur lands, that the oral lease set up by Defendants 1 to 10 was not true and that they occupied the lands illegally. It differed from the trial Court and held that defendant No. 1 and others were not protected tenants in respect of the lands in Gandamalla village, that Exhibit D-40, the tenancy certificate, on the basis of which the 1st defendant was held to be a protected tenant by the trial Court was brought into existence to support the defendant's case, and therefore allowed the plaintiff's suit in toto. The defendants have filed this appeal by certificate granted by the High Court. We find ourselves in entire agreement with the learned Judges of the High Court. It is not necessary to deal with two other items of property which was dealt with by the court below.

2. The whole case turns upon the question whether Exhibit P-8 is a genuine document or not. If it is held to be a genuine document the question whether the plaintiff repaid the loan taken by her from the 11th defendant is of no importance. It is difficult to understand the written statement filed on behalf of the 11th defendant on this aspect of the case. It is in English and refers to the amount advanced by the 11th defendant towards the purchase of the land as a loan though contrary to the plaintiff's contention it is contended that the whole of the Rs. 5,000 was given by the 11th defendant. If it is a loan, whether it is of Rs. 5,000 or Rs. 3,000 makes no difference. Though in the written statement the verbal agreement as well as the Exhibit P-8 are formally denied, there is no positive denial. This document is signed not only by the 11th defendant but also her husband, D. W. 15 as a witness. It bears the 11th defendant's thumb impression. The trial Court thought that the fact that the thumb impression was found at the beginning of the document was suspicious. The learned Judges of the High Court have, however, stated that such is the usual practice in the Telangana region. We cannot but give due importance to this observation of the learned Judges. Their view is also supported by the fact that Exhibit D-1, the General Power of Attorney, said to have been executed by the plaintiff and the 11th defendant bears the thumb impressions of both of them in the beginning. In the circumstances if the defendants wanted to impugn the genuineness of Exhibit P-8 it was open to them to have insisted that Exhibit P-8 should be sent to the finger print expert for finding out if the thumb impression on it is that of the 11th defendant. This was not done. Nor did D. W. 15 have the courage to demand that his signature should be sent to the handwriting expert. And it has to be pointed out that though P. Ws. 2-4 and P. W. 7 spoke about the execution of Exhibit P-8 by Defendant 11, there was no cross-examination worth speaking on this point. P. W. 3 on seeing Exhibit P-8 identified the signature of D-11's husband, and stated that this was the document which was executed by the 11th defendant. He was not cross-examined at all. P. W. 3 is a stranger to the family. There was no cross-examination of this witness worth speaking of. P. W. 4 identified the signature of D. W. 15 and the other attesting witness and also the thumb impression of the 11th defendant. Although the 11th defendant's pleader wanted to cross-examine him, he did not actually do so. P. W. 7 is none other than the 11th defendant's son-in-law. He was also not cross-examined of the point. In the circumstances we are satisfied that the High Court was right in coming to the conclusion that Exhibit P-8 is a genuine document. The most significant fact to our mind is that in spite of the definite assertion on behalf of the plaintiff that the 11th defendant executed Exhibit P-8, she did not categorically deny this nor did she enter the witness box and deny it. We do not think that Exhibit D-1, in any way militates against this conclusion. The High Court has pointed out that though the plaintiff is a signatory, the document only had her thumb impression and that it was executed at a time when plaintiff's husband was admittedly in jail, and that the internal evidence also shows that this document is the result of a sinister attempt by D. W. 15 to establish the rights of his wife to a half share in the lands.

3. We think it hardly necessary to refer at length to the conclusions arrived at by the trial Court as well as the Appellate Court that the 11th defendant was not in possession throughout. We agree with their concurrent finding on this point.

4. As regards the lands in Gandamalla village, in view of the other findings already given above, the defendants' case rests only upon Exhibit D-40. The question of its genuineness was not seriously argued. The High Court has pointed out that interpolations and corrections have been made in Exhibit D-38, the Permanent Register, for obtaining Exhibit D-40. It has elaborately discussed the question of genuineness of Exhibit D-38 and Exhibit D-40 and come to the conclusion that they have been brought into existence to support the case of the defendants. The learned District Judge was of the opinion that right or wrong since Exhibit D-40 had been obtained, no Civil Court could question it. We agree with the High Court that when once Exhibit D-40 is held to be not a genuine

document at all there is no question of any rights that could be claimed on the basis of that document; nor could the jurisdiction of the Civil Court be shut out on the basis of a spurious document. We have dealt with the only two points argued.

5. As a result we uphold the judgment of the High Court and dismiss this appeal. The appellants should pay the respondents' costs.

</html