

K. Venkata Seshiah

Vs

Kanduru Ramasubbamma (Dead) By Lrs.

Civil Miscellaneous Petition No. 15001 of 1989

(CJI Ranganath Misra, Kuldip Singh JJ)

19.02.1991

ORDER

1. The special leave petition under Article 136 of the Constitution is directed against the affirming judgment of the Andhra Pradesh High Court in a suit for title and injunction.

2. In view of the fact that a petition of compromise in respect of the entire subject matter of litigation has been filed in this Court it is unnecessary to refer to the facts leading to the litigation. We shall, therefore, confine the discussion to matters pertinent to the compromise.

3. Subbamma adopted one K. V. Seshiah. Seshiah married two wives. Through the first wife he had a son born to him by name Sudarshan Gupta and through the second another son by name Anand Babu. In February 1985, during the pendency of the special leave petition the adoptive mother died. Sudarshan and Anand Babu laid claim to the entire property of Subbamma exclusively to each of them under two different wills said to be by Subbamma and each contended that the other will was a forged one. With the death of the adoptive mother, Seshiah laid claim to the entire property as heir. While each of the parties had taken such stand in the litigations a compromise was brought about on August 21, 1987 between the father and his two sons and the same was filed in this Court. The terms of the compromise stipulated payment of Rs. 1 lakh by the father to each of his two sons in lieu of relinquishment of their interest. When the matter was listed before the court for recording of the compromise. Sudarshan Gupta, respondent 2 herein maintained that he had not been paid Rs. 1 lakh as stipulated and the he had no intention to accept the compromise. The question as to recording of the compromise was taken up by the court and parties have been heard.

4. One of the stipulations in the compromise deed which has admittedly been signed by the father and his two sons stipulates :

"The petitioner has given to the second and third respondents (the two sons) an amount of Rs. 1 lakh each and the second and third respondents have received the same."

In the face of such a statement in the compromise deed signed by the parties respondent 2 has disputed the fact of payment and has, in the meantime, alienated about 81 acres of property which constitutes the subject matter of dispute to third parties. The alienees have now been brought on record under orders of this Court.

5. We have heard counsel for the original parties as also the alienees. The alienations are for about a purported consideration of Rs. 4 lakhs. The sale deeds indicate that a sum of Rs. 1 lakh had been

received earlier and a net amount of Rs. 77,124 out of the consideration money under these documents has been paid before the registering authority. The alienees have admittedly been in possession of the property from the date of the sales which is more than three years' old by now.

6. Admittedly, the transfers are pendente lite. In fact, if the compromise is valid and binding the alienor-respondent 2 had no interest in the property to part with in view of the stipulation in the compromise that on receipt of Rs. 1 lakh he relinquished his entire interest in the property. The alienees have made an attempt to hold out that there were agreements for sale prior to the compromise for which there is no acceptable evidence. We think we have to find that the alienees had no interest in the property prior to the compromise and we must hold that the sale deeds are subsequent to August 21, 1987.

7. Mr. Ram Kumar who appeared for respondent 2, apart from maintaining that his client has not received the sum of Rs. 1 lakh has not been able to point out any justification as to why the compromise should not be acted upon and on the basis of it the litigation may not be disposed of. The factum of compromise is not in dispute. Respondent 2 and his counsel Mr. Ram Kumar have accepted the fact that the parties have signed the compromise petition which contain terms which they had accepted and all parties have accepted the document of compromise to be genuine.

8. Counsel for the alienees has taken the stand that the said alienations are valid and the transferees have become owners of the property and has even maintained that there have been improvements of the property by the alienees. He sought to rely on certain decisions which on being referred to were found to be totally inapplicable to the facts of the case. On the other hand, we find that a similar question arose before the Orissa High Court in the case of Bhaja Govinda Maikap v. Janaki Dei (AIR 1980 Ori 108) where the power of the court under Order XXIII, Rule 3 of the Code of Civil Procedure in the face of an objection of one of the parties to the compromise was considered. Relying upon several authorities of different High Courts and one of the Privy Council referred to in the decision, the High Court held that once the court was satisfied that there was a compromise it was for the court to record the same and no option lay before the court to act otherwise.

9. We are in accord with the principle indicated in the said decision and are of the view that as the compromise petition is genuine and lawful the same has to be acted upon. We direct that the compromise petition shall be accepted and in terms thereof the suit shall be disposed of and the terms of the compromise shall form part of the order to be drawn up in this Court for disposing of the special leave petition.

10. With a view to settling all equities between the parties and with the consent of Seshaiyah who is present in court, and counsel for the sons and after hearing the advocate for the alienees, we make the following directions :

1. Seshaiyah shall pay a sum of Rs. 1 lakh more to Sudarshan Guptha within eight weeks from today. This amount shall be deposited in the Registry of this Court within the time indicated and Sudarshan Guptha shall be free to withdraw the amount.

2. Rs. 77,124 being the amount paid by the alienees before the Sub-Registrar in respect of the sale deeds shall be deposited within the same period in the trial court and the alienees of the different sale deeds would be entitled to withdraw the amounts on the basis of the record made by the Sub-Registrar on each of the sale

deeds.

3. The alienees have no right created under the alleged sale deeds. Their possession is without authority of law. Ordinarily, they would have been liable to account for mesne profits. In view of the fact that there was the allegation of payment of Rs. 1 lakh to Sudarshan Guptha which we have not investigated and to meet the further allegation that some improvements have been made to the property which too we have not gone into, we direct that the mesne profits shall be set off against the same. Under orders of this Court security has been furnished for mesne profits. In view of the aforesaid direction, the security furnished in the trial court shall stand discharged and the alienees will have no liability to account for mesne profits. We declare and clarify that none of the sale deeds is valid and none of the alienees has any interest in the aforesaid property.

4. The alienees shall deliver vacant possession of the property by April 30, 1991, to Seshaiyah and in the event of failure to do so the trial court is directed by our present order to deliver vacant possession of the entire property in suit including those which are covered by the sale deeds in favour of the alienees to Seshaiyah within one month therefrom. If necessary, the trial court may appoint a Commissioner and take police help for executing the order and such cost shall ultimately be borne by the defaulting alienees but may initially be met by Seshaiyah.

There would be no order for costs.

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