

SUPREME COURT OF INDIA

Atla Sidda Reddy

Vs.

Busi Subba Reddy

S.L.P.(C) No.4549 of 2008

(Altamas Kabir and Cyriac Joseph JJ.)

06.05.2010

JUDGEMENT

Altamas Kabir, J.

1. Despite service of notice, the respondents have not appeared to contest the Special Leave Petition which is directed against the judgment and order dated 18th April, 2007, passed by the Andhra Pradesh High Court in S.A. No.656 of 1997.

2. In September, 1988, the petitioner filed O.S. No.735 of 1988 in the Court of District Munsif, Cuddapah, inter alia, for declaration of the petitioner's title to the plaint schedule property and for permanent injunction to restrain the defendant No.1 and his men from interfering with the petitioner's peaceful possession therein and enjoyment thereof. The III Additional District Munsif dismissed the petitioner's suit on 29.11.1990, upon holding that the petitioner had failed to establish the title of his predecessor-in-interest in the suit land. The petitioner preferred an appeal, being A.S.No.113 of 1990, in the Court of 1st Additional District Judge, Cuddapah, which was allowed on 26th March, 1997. The judgment and order of the trial court was set aside and the suit was decreed in favour of the petitioner.

3. It may be indicated that the defendant No.1 Koppolu Subba Reddy, died during the pendency of the appeal before the 1st Additional District Judge, Cuddapah, and the Respondents Nos. 2 to 4 herein were brought on record as his legal representatives. The respondents herein filed Second Appeal No.656 of 1997, in the Andhra Pradesh High Court and the same was allowed by the learned Single Judge on 18th April, 2007. The judgment and decree of the 1st Additional District Judge was set aside and the judgment and decree of the trial court dismissing the petitioner's suit was restored.

4. In order to appreciate the submissions of Mr. A. Subba Rao, learned advocate, appearing in support of the Special Leave Petition, it is necessary to set out the facts of the case in brief.

5. According to the petitioner, the suit property belonged to the defendant No.1, Koppolu Subba Reddy who sold the same to one Pasupula Lakshamma by a registered deed of sale dated 19.7.1966. Lakshamma, in her turn, sold the property to one Syed Ghouse Bi alias Chand Begum, a minor represented by her guardian and father Syed Ghouse, by a registered sale deed dated 10.5.1974 and the same was allegedly attested by the defendant No.1 himself.

“Thereafter, Syed Ghouse Bi alias Chand Begum sold the land to the petitioner by a registered deed of sale dated 5.3.1984 and the petitioner is in peaceful possession and enjoyment of the said land in his own right since then. The suit was resisted by the defendant by filing a written statement wherein it was admitted that the suit lands originally belonged to the defendant No.1 who sold the same to Lakshamma, but the said Lakshamma sold all the lands, except Survey No.93/6, to one Thondolu Mahaboob Basha, son of Dathagiri by a registered deed of sale dated 22.5.1968.

Subsequently, Thondolu Mahaboob Basha sold two portions of the said land, namely, Survey No.99/6 to an extent of 40 cents out of 52 cents and Survey No.99/6 to an extent of 47 cents, comprising the suit land, to Pallampalli Pedda Veera Reddy, by a registered deed of sale dated 17.5.1982. The defendant thereafter purchased the said two plots of land from the said Pallampalli Pedda Veera Reddy by a registered deed dated 7.11.1985. The defendant, accordingly, was the absolute owner of the said land and he has been in possession and enjoyment of the property since then.”

6. In the light of the pleadings of the parties to the suit, the main issue which fell for decision of the trial court was whether the petitioner had acquired title to the suit properties by virtue of the deed of sale dated 5.3.1984 executed in his favour by Syed Ghouse Bi alias Chand Begum in view of the case of the defendant that Lakshamma had already sold the suit property to one Thondolu Mahaboob Basha by a registered deed of sale dated 22.5.1968 (Ext.B2). In other words, what the Court was called upon to decide was whether Ext.B2 extinguished Lakshamma's right in the suit property so that she no longer had any right to execute and register the sale deed dated 10th May, 1974 executed in favour of Syed Ghouse Bi alias Chand Begum.

7. The trial court came to the finding that in view of the registered sale deed dated 22.5.1968 executed by Lakshamma in favour of Thondolu Mahaboob Basha in respect of the suit property, she was no longer competent to execute the subsequent sale deed in respect of the same property in favour of Syed Ghouse Bi alias Chand Begum through whom the plaintiff/petitioner claims title. The trial court thereupon dismissed the suit.

8. The First Appellate Court, however, chose not to rely on the evidence of Lakshamma, (DW.4), who in her deposition was not certain as to how the sale deed was said to have been executed by her in favour of Thondolu Mahaboob Basha as she neither knew him nor the scribe, who is said to have written the sale deed.

9. The First Appellate Court held that the testimony of DW.4, Lakshamma, did not inspire confidence and, accordingly, discarded the same as far as the sale deed in favour of Thondolu Mahaboob Basha on 22.5.1968 (Ext.B2) is concerned and relied on the subsequent deed executed in favour of Syed Ghouse Bi alias Chand Begum dated 10.5.1974 (Ext.A1), and decreed the suit.

10. As indicated hereinbefore, the High Court accepted the evidence of DW.4 Lakshamma and came to a finding that by virtue of Ex.B2 she had transferred all her rights, title and interest in the suit properties in favour of Thondolu Mahaboob Basha and having divested her of the title to the suit properties, she was no longer competent to execute a further sale deed in respect of the same property in favour of Syed Ghouse Bi on 16.3.1974 (Ex.A1). The High Court having accepted the sale deed dated 22.5.1968 in favour of Thondolu Mahaboob Basha as being genuine, it came to the conclusion that since the said document was prior in point of time in relation to the subsequent document executed in favour of Syed Ghouse Bi, the plaintiff/petitioner, who had acquired his title through Syed Ghouse Bi alias Chand Begum, did not acquire any title to the suit properties. On such finding, the High Court reversed the judgment and decree of the first Appellate Court.

11. The factual aspect having been dealt with in detail by the Courts below, ending in the findings of the High Court, we are not inclined to delve into the facts any further. As indicated by the trial Court, Ext.B2 is a crucial document and was admittedly anterior in point of time to Ext.A1 subsequently executed by DW.4 in favour of Syed Ghouse Bi when she had already divested herself of title to the suit properties. The petitioner did not, therefore, acquire any title to the suit property and the suit was rightly dismissed.

12. Having regard to the above, the submissions advanced on behalf of the petitioner do not warrant any interference with the order of the High Court impugned therein and the same is, accordingly, dismissed, but without any order as to costs.