

*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

+ A.S.No.114 OF 2009

% 19.06.2023

Between:

**Gootla Narayana Reddy rep. by his
GPA Mariyala Yella Reddy and others**

Appellants

Vs.

Koothuru Srinivasa Reddy (died) and others

Respondents

! Counsel for Appellants : Mr. C. Ramesh Sagar

^ Counsel for Respondents : Mr. P. Giri Krishna

<GIST:

> HEAD NOTE:

? Cases referred : NIL

THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**A.S.No.114 OF 2009****JUDGMENT:**

This appeal is filed by the plaintiffs aggrieved by the judgment and decree dated 17.01.2008 in O.S.No.4 of 2002 on the file of learned I Additional District Judge, Karimnagar, wherein the suit of the plaintiffs for declaration and perpetual injunction was dismissed.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the learned trial Court.

3. The brief facts of the case, which necessitated the plaintiffs to file the present appeal, are as follows:

a) The plaintiffs filed the main suit for declaration and perpetual injunction in respect of the suit schedule property i.e., land to an extent of 1980 square yards in Sy. No. 199 & 200, situated in Husnabad Village and Mandal, Karimnagar, contending that originally, one M. Laxmamma is the owner of land admeasuring Ac.2.00 guntas in Sy.No.199 and Ac.0.9 guntas in Sy.No.200, situated at Husnabad (V) from whom Padala Chandraiah, Padala Rajamouli, Padala Prabhakar and Padala Annapurna, who are the partners of a firm, by name *Annapurna Agro Service Centre*,

Husnabad (in short 'AASC'), have purchased the same under registered sale deed bearing document No.537/1975 dated 06.02.1975 in the name of the said firm, which was dealing with the processing of all variety of seeds. The said firm was closed down in 1986. Before the closure of the said firm, the partners sold an extent of 1320 square yards in Sy.No.199 and 660 square yards in Sy.No.200 for a sum of Rs.17,000/- under a sale deed bearing document No.1026/1983 dated 12.02.1983 to the first plaintiff. Since then, the first plaintiff has been in continuous possession and enjoyment of the same.

b) Subsequently, the first plaintiff sold an extent of 240 square yards in Sy.No.199 and $26 \frac{2}{3}$ square yards in Sy.No.200 to the second plaintiff under a document bearing No.1619/1991 and delivered possession to her. The second plaintiff filed an application dated 20.11.1995 before the Gram Panchayath, Husnabad for construction of a building and accordingly permission was granted vide File No.A2/123/95 on 12.06.1997. Later, the second plaintiff constructed a house, which was allotted with house No. 11-101/2 and since then, she has been paying taxes. The first plaintiff further sold an extent of 255.5 square yards in Sy.Nos.199 and 200 vide document bearing No.1155/1994 dated 30.06.1994

and delivered the possession to Gogula Pushpavathi. The first plaintiff also sold another plot to one Parkala Venkataiah existing in between two plots purchased by plaintiff No.2 and Gogula Pushpavathi.

c) After selling the said lands to third parties, the first plaintiff was still in possession of the remaining land out of 1980 square yards. While the things stood thus, a decree in O.S.No.31 of 1985 on the file of learned Senior Civil Judge, Karimnagar came to be passed against 'AASC' in favour of Punjab National Bank, which is second defendant in the suit and final decree of sale of Ac.2.00 guntas of land belonging to it was passed arising out of mortgage transaction. The suit schedule property was put for sale for realizing the decretal amount. The sale was conducted on 10.06.1997, specifying the schedule of the property to be sold in the auction. In the sale proclamation and also paper publication, the property to be sold was described within the following boundaries:

East :	Plot of K. Vishwanatham
West :	House of Malla Reddy
North:	Plot of V. ramachandram
South:	PWD Road to Warangal

d) Though second defendant has mentioned the properties as two

acres in Sy. Nos.199 and 200, the boundaries were not mentioned in the schedule and it was mentioned that despite efforts, particulars of boundaries could not be gathered on the spot. The name of Vishwanatham on Eastern side is shown because he has entered into an agreement for purchasing a portion of the land in Sy. Nos.199 and 200 with one Padala Chandraiah and others. But subsequently, Vishwanatham has dropped the idea of purchasing the plot, as such the first plaintiff has purchased the plot. In fact, Vishwanatham does not own and possess the land on Western side of the said Sy. Nos.199 and 200. The said Vishwanatha has no interest in Sy. Nos.199 and 200 and he is one of the witnesses to the document bearing No.1155/1994 for the plot purchased by Smt. Gogula Pushpavathi.

e) Though, in the sale proclamation and auction proceedings, the extent of the land to be sold was shown as Ac.2.00 guntas, in fact, the said extent was not available and exists on the spot within the boundaries as shown in the proclamation. The extent of the land within the boundaries shown in the sale proclamation is measuring Ac.1.24 guntas only. Hence, the sale conducted by the Court is for Ac.1.24 guntas only, as Ac.0.16 guntas of plot was previously purchased by the first plaintiff and the same is not covered under

the sale. However, there is mistake committed in mentioning the correct extent by the Punjab National Bank in the schedule of property slated for sale.

f) In the said auction, the defendant No.1 had purchased the land of Ac.2.00 guntas in Sy.Nos.199 and 200 belonging to 'AASC' being the highest bidder for Rs.18,70,000/-. The sale was confirmed by the Court on 24th November, 1998 but till now the certificate of sale has not been issued in favour of auction purchaser, as such the sale has not become final, conclusive and no title was passed on to the auction purchaser for Ac.2.00 guntas in Sy.Nos.199 and 200 till date. The plaintiffs are in possession of the land to an extent of Ac.0.16 guntas in Sy.No.199 and 200 as referred above, as such the auction purchaser has no right in the said land by virtue of the sale and also for the reason that the defendant No. 1 is aware of the fact that the plaintiffs are in possession of the property and no steps were taken or objection raised by the defendants before the sale was concluded regarding the property sold in auction or the extent of land sold. The defendants are estopped under the law from claiming rights over the suit schedule land i.e., Ac.0.16 guntas. Hence, the plaintiffs filed suit for declaration and perpetual injunction as stated supra.

4. The defendant No. 1 filed written statement denying the averments of the plaint and contended that the firm-AASC, Husnabad, availed loan facility from defendant No. 2 Bank for running its business and as security for repaying the said loan, the firm had mortgaged entire extent of Ac.2.00 guntas covered by registered sale deed bearing document No.537 of 1975 dated 06.02.1975. Since the loan limit was enhanced in the year 1982 by the defendant No. 2 Bank, the firm re-deposited its title deed on 22.11.1982 and created equitable mortgage on 22.11.1982 for repayment of the loan to the bank. The firm, AASC, failed to pay the mortgage money and also failed to exercise its right of redemption, as such the defendant No. 2 Bank exercised its right to cause the mortgaged property to be sold for apportioning the sale proceeds for payment of mortgage debt. For this purpose, the defendant No. 2 Bank filed the mortgage suit seeking sale of mortgaged property i.e., Ac.2.00 guntas vide O.S.No.31 of 1985 against the mortgagor firm. A preliminary decree was passed on 05.08.1983 in the said suit against the mortgagor. The mortgagor failed to pay the mortgage money within the period fixed by the Court. Therefore, a final decree for sale of mortgaged property was passed on 20.09.1994. In execution of said final decree for sale in E.P.No.13 of 1985, entire

mortgaged property was sold by Sub Court, Karimnagar on 10.06.1997 for Rs.18,70,000/- in favour of defendant No. 1. Subsequently, the mortgagor filed a petition to set aside the sale on number of grounds vide E.A.No.40 of 1997, which was dismissed by the said Court on 24.11.1998. The High Court also dismissed the appeal filed by the mortgagor against the said order, dated 20.09.1999 in I.A.No.3076 of 1998. Thereafter, the sale was confirmed in favour of the first defendant on 24.11.1998 and sale certificate was also issued in respect of the land to an extent of Ac.2.00 guntas. At this stage, the plaintiffs filed the suit and obtained stay of delivery of possession by way of ex parte order. Since the right of mortgagor to claim redemption is extinguished, the mortgagee/bank exercised its right to cause the mortgage property to be sold and the sale in favour of first defendant has become final and binding on the mortgagor i.e., the 'AASC' and all persons deriving title from the said mortgagor are subsequent to the mortgage created on 22.11.1982. Even if the plaintiffs are genuine purchasers from the firm or partners, still they would get no title in respect of the suit schedule property, as a charge was already created over the property in the form of mortgage with the defendant No. 2 Bank. Since the first plaintiff alleged that he sold the land to several third persons,

the plaintiffs cannot maintain the suit in respect of the suit land. The plaintiffs, who are claiming title over the property from the mortgagor i.e., 'AASC', cannot seek any declaration in respect of suit land as mortgagor himself filed E.P.No.40 of 1997 to set aside the sale and failed to get the relief. The suit is not maintainable, as the right of redemption under the mortgage created in favour of the second defendant, extinguished and the mortgagor and all persons deriving title subsequent to mortgage have lost all rights in the mortgaged suit schedule property.

5. The defendant No. 2 Bank filed its written statement, which is in similar lines to that of the written statement filed by the first defendant. According to defendant No. 2, 'AASC' deposited the original sale deed dated 06.02.1975 with them and created equitable mortgage on 22.11.1975 with them and thereafter created equitable mortgage on 22.11.1982 for the loan obtained by them and since they failed to repay the loan amount, a suit was filed against the said firm. Any transfer or any construction over the mortgage property during the pendency of the suit in O.S.No.31 of 1985 is hit by the provisions of Section 2 of the Transfer of Property Act. It is stated that in O.S.No.31 of 1985 the boundaries in respect of the suit land i.e., Ac.2.00 guntas in Sy. Nos.199 and 200 were not mentioned as

they could not be ascertained at that time. But the plaintiffs therein have given the boundaries of said Ac.2.00 guntas, which are existing on the date of purchase in the year 1975 as given in the registered sale deed along with sketch map, which is the property mortgaged and sold. On Eastern side boundary of sale deed, it is shown as Kuntakatta. The said Kuntakatta was removed and did not exist by the year 1985 when the suit was instituted. Said Vishwanatham was in possession of the land, which is in the eastern boundary of Ac.2.00 guntas. Anyhow, as the whole extent of Ac.2.00 guntas of land under the sale deed is the subject matter of mortgage, the plaintiffs cannot contend it is not in Ac.2.00 guntas of land. A final decree was passed against AASC on 20.09.1994 under E.P.No.13 of 1995 and the entire mortgaged property was sold by Sub-Court, Karimnagar on 10.06.1997 in favour of the defendant No.1 herein for highest bid amount of Rs.18,70,000/- and the mortgagor filed a petition to set aside the said sale vide E.A.No.40 of 1997, which was dismissed on 24.11.1998 by the Sub Court, Karimnagar and the appeal was dismissed by this Court on 20.11.1999 in A.A.O.No.3076 of 1998. Subsequently, the sale was confirmed in favour in favour of the first defendant on 24.11.1998. Sale Certificate is also ordered to be issued and the defendant No.1 is about to apply for delivery of

possession of entire two acres of land sold. At that stage, the plaintiffs have filed the suit and obtained stay of delivery of possession. Since the right of mortgagor to claim redemption is extinguished, they have exercised their rights in respect of the mortgage property. Even if the case pleaded by the plaintiffs is found to be true, they are deemed to be persons deriving title to the mortgaged property after creation of the mortgage and thus, they are precluded and estopped from claiming any rights in the suit property. The plaintiffs will not get any better title from AASC since the property was already mortgaged with them. A portion of the suit schedule property is sold to third parties by name Gogula Pushpavathi and Parkala Venkataiah. Hence, the plaintiffs cannot maintain the suit in respect of portion of the suit land said to have been sold to said persons. The plaintiffs, who claim to have derived title to the suit property from the mortgageor i.e., AASC, cannot claim the relief of declaration that the sale held on 10.06.1997 as bad and not binding for the reason that the mortgagor himself filed E.A.No.40 of 1997 to set aside the sale and failed to get the relief. The suit is not maintainable as the right of redemption under the mortgage created in favour of the defendant No.2, extinguished and the mortgagor and all persons deriving title subsequent to mortgage

have lost all rights in the mortgaged suit property.

6. Based on the above pleadings, the trial Court has framed the following issues:

- 1. Whether the sale in respect of 1980 square yards in Sy.Nos.199 and 200 in favour of the first plaintiff is true, valid and binding?*
- 2. Whether the plaintiffs are entitled for a decree of perpetual injunction restraining the defendants from interfering with the peaceful possession in respect of suit schedule land?*

7. The plaintiffs, in support of their case, have examined PWs 1 and 2 and got marked Exs. A1 to A17. On behalf of defendants, DW1 was examined and Exs.B1 to B15 were marked. The trial Court on appreciating the evidence on record, has dismissed the suit.

8. Aggrieved by the same, the plaintiffs have filed the present appeal on the following grounds:

- a) The trial Court failed to appreciate that the property sold in court auction on 09.06.1997 in E.P.No.13 of 1995 is less than 2 acres in Sy.Nos.199 and 200 and the property sold is existing within the boundaries given in the schedule annexed to execution petition. A reading the boundaries given for Ac.2.00 guntas land covered by the sale deed, dated 06.02.1975 Ex.B7 and the boundaries given in the schedule annexed to E.P.No.13 of 1995, Ex.A3 and warrant of

sale of property Ex.A4, it is very much manifest and clear that the suit property measuring 1980 square yards covered by sale deed Ex.A2 is not part and parcel of proclamation of sale in E.P.No.13 of 1995.

b) The trial Court failed to appreciate the well settled proposition of law that the boundaries will prevail when there is a conflict between the area and boundaries.

c) The trial Court erred in dismissing the suit even though the defendant Nos.1 and 2 have not discharged their burden in proving the fact that the suit property measuring 1980 square yards has been included in the sale proceedings in E.P.No.13/1995. The burden is on the defendant Nos.1 and 2 on issue No.1 to prove that the suit property is also part of sale proceedings.

d) The trial Court failed to appreciate that the suit property was never included in the sale proceedings in E.P.No.13 of 1995 as such the present suit is not barred.

e) The conclusion of learned Judge that the suit property is part and parcel of two acres land sold in E.P.No.13 of 1995 has no basis and the same is not supported by any material and evidence. The

sale has been conducted at the instance of second defendant in execution proceedings and he is the best witness to speak about the said fact, however, he has not entered into witness box though filed separate written statement. A specific plea has been taken by AASC, Husnabad in E.A.No.40 of 1997 filed on 16.06.1997 to the effect that the boundaries shown in E.P.No.13 of 1995 are not relating to two acres land in Sy.No.199 and 200 and that the property included in the present suit is not part of property put to sale. The second defendant has not disputed the said fact in the counter. The second defendant is estopped in contending that the suit property is also sold in auction held on 10.06.1997. The suit property has been excluded from the sale proceedings as per the boundaries shown in Exs.A3 and A4.

f) The trial Court has not properly appreciated the documents Exs.A3 to A6 and Ex.B7 and thus, came to an erroneous conclusion that the suit property is part of the property put to auction in E.P.No.13/1995.

9. Heard Sri C. Ramesh Sagar, learned counsel for the appellant and Sri P. Giri Krishna, learned counsel for the respondent and perused the record.

10. The case of the plaintiffs is that their vendor, AASC, Husnabad, had purchased the suit schedule property from the original owner, Smt. M. Laxmamma under a registered sale deed vide document No. 537 of 1975, dated 06.02.1975, marked as Ex.B.7. Subsequently, AASC had obtained loan from the defendant No. 2 Bank by mortgaging the said property as security by creating equitable mortgage dated 22.11.1982, marked as Ex.B.5. Later, the said firm sold an extent of 1980 sq. yards in favour of the first plaintiff by delivering possession by executing a registered sale deed, dated 12.02.1983. In 1991, the first plaintiff sold an extent of 240 sq. yds. in favour of plaintiff No. 2 and other extents to some other persons. In the meanwhile, as the AASC fail to repay the mortgage amount, the defendant No. 2 obtained a decree in respect of the mortgaged property; the property was put in auction and the same was sold in favour of defendant No. 1 being the highest bidder. It is the case of plaintiffs that in the sale proceedings, the boundaries in respect of the property for which the mortgage decree obtained by defendant No. 2 Bank in respect of Ac.2.00 guntas are not matching and in fact, the suit land i.e., 1980 sq.yds., is not part and parcel of the property mortgaged with defendant No. 2 Bank. Inasmuch as they are in possession of the suit land by the time of sale

proceedings arising out of mortgage decree obtained by the defendant No. 2 Bank, the plaintiffs are entitled to seek title in respect of the suit property. To substantiate the claim, P.W.1, the G.P.A. of plaintiff No. 1, deposed about the purchase of suit land by the plaintiff No. 1 under Ex.A.2. He also speaks as to the decree obtained by the defendant No. 2 in O.S. No. 31 of 1985 on the file of the Senior Civil Judge, Karimnagar and about passing of final decree in respect of Ac.2.00 guntas belonging to AASC and the defendant No. 2 filing of E.P. proceedings against the said firm. In line with the plaint pleadings he deposed that in the sale proceedings, only the boundaries of Ac.2.00 guntas are shown, but not the suit schedule property as in O.S. No. 31 of 1985. In the sale proceedings, on the eastern side, the property of one Vishwanatham is shown, but in fact, he is not in possession of the property. P.W.2, the husband of plaintiff No. 2, deposed about the purchase of suit land by plaintiff No. 1 and the purchase of part of land under Ex.A.7 by plaintiff No. 2 from plaintiff No. 1.

11. Defendant No. 3, who is the son of deceased defendant No. 1, as D.W.1 deposed about the loan transaction between the defendant No. 2 Bank and AASC, filing of case by the Bank for recovery of mortgage loan amount; obtaining of sale certificate in respect of

Ac.2.00 guntas of land in Sy. Nos. 199 and 200 belonging to the said firm; conducting of sale Auction; obtaining of sale certificate by defendant No. 1 in E.A. No. 10 of 2005 and about the delivery of possession by excluding the suit land to the extent of 1980 which is the subject matter by then in E.A. No. 6 of 2005.

12. Admittedly, on failure to clear the mortgage loan by the vendor of plaintiffs in respect of land to an extent of Ac.2.00 in Sy. Nos. 199 & 200, the defendant No. 2 Bank filed O.S. No. 31 of 1985 on the file of Sub-Court, Karimnagar which was decreed on 05.08.1993 as seen under Ex.B.2. As seen from Ex.B.3, a preliminary decree was passed in favour of the defendant No. 2 Bank for sale of mortgage property. Thereupon E.P. No. 13 of 1995 came to be filed seeking execution of Ex.B.3. On 10.06.1997 the property was put in auction wherein the deceased defendant No. 1 stood as highest bidder. At that stage, the mortgagor i.e., the vendor of plaintiffs (Annapurna Agro Centre) filed E.A. No. 40 of 1997 challenging the sale made in favour of deceased defendant No. 1, which was ended in dismissal on 24.11.1998 as seen from Ex.B.13. Even the appeal preferred thereagainst in A.A.O. No. 3076 of 1998 stood dismissed by this Court as can be seen from Ex.B.15, dated 20.09.1999. Thereafter, the purchaser, defendant No. 1, by filing E.A. No. 10 of 2005 sought

for issuance of sale certificate for the entire land of Ac.2.00 guntas which was ordered by issuing sale certificate on 10.10.2005 under Ex.B.8. After issuance of the sale certificate, the legal representatives of deceased defendant No. 1, who came on record as defendant Nos. 3 to 7, filed E.A. No. 6 of 2005 for delivery of possession which was ordered on 22.11.2005 as seen from Ex.B.9, however, excluding the suit schedule land being it in dispute at that time.

13. Admittedly, the plaintiffs are claiming their title from the mortgagor of defendant No. 2 i.e., AASC based on Ex.A.2. Their main ground is that the extent of land mortgaged by their vendor with defendant No. 2 is only to an extent of Ac.1.24 guntas and the remaining property is the one belonging to the plaintiffs which was purchased under Ex.A.2. They also raised a plea that in the suit preferred by defendant No. 2 against their vendor in O.S. No. 31 of 1985, the Bank did not show the boundaries, but whereas, in the sale proceedings, the boundaries of Ac.2.00 guntas are given wrongly showing Mr. K. Vishwanatham as the owner of eastern side plot, which in fact, is incorrect. Having taken those pleas, touching the dispute as to the boundaries and the extent of mortgage of land by their vendor to defendant No. 2, they have not chosen to made the

mortgagor as party to the suit, who was the right person to speak whether or not the suit property is part and parcel of Ac.2.00 guntas of land mortgaged to the Bank or it is totally a different land which is claimed to be existing on eastern side of Ac.2.00 guntas of land as shown in sale proceedings and said Vishwanatham at any point of time contemplated to purchase it and later it was purchased by plaintiff No.1. The vendor of plaintiffs i.e., AASC having created mortgage on 22.11.1982 i.e., much prior to the sale of property to the plaintiff No. 1, absolutely, had no valid right to convey any better title to the plaintiff No. 1. These aspects have been rightly analysed by the trial Court at page Nos.14 to 17, wherein it was observed that in plaint under Ex.B.1 in O.S.No. 31 of 1985 on the file of Senior Civil Judge, Karimnagar the boundaries of land to an extent of Ac. 2-00, which was mortgaged with defendant No.2, were not mentioned but they have given in schedule about description of title deed of Ac. 2-00 of land in Sy Nos. 199 and 200 with factory and godown premises, wherein AASC was carrying on its business. Though it was specifically contended by the learned counsel for the plaintiffs that actually there was no such land existing on the ground, absolutely the said plea was not taken by the mortgagor itself in E.P. proceedings filed against them in O.S.No. 31 of 1985. It was further

observed that even they did not say that they have sold any property to the plaintiff No. 1. In the E.P. proceedings, the mortgagee has shown the existing boundaries as on the date of filing of the E.P. and accordingly the Court issued sale certificate in respect of Ac.2-00 guntas of land. It is also pertinent to note that PW-1, who is G.P.A holder of first plaintiff pleaded that after purchase of 1380 Sq. Yds., plaintiff No. 1 sold the property to second plaintiff to an extent of 240 Sq. yds., in Sy Nos. 199 and 26 2/3 Sq. Yds., in Sy. No. 200 and also 255.5 Sq. Yds., to one Gogla Pushpawathi under a document, dated 30-06-1994 and another plot existing between plaintiff No.2 and said Pushpawathi was sold to one P. Venkataiah. It is to be observed that what was the remaining actual extent of land that is in possession of plaintiff No. 1 is not mentioned either in pleadings or by any evidence. The extents sold by the first plaintiff to plaintiff No. 2 and one Pushpawathi, comes to 699.78 Sq. Yds. Though he stated that he also sold another plot to one P. Venkataiah, the actual extent is not mentioned. It is pertinent to note that the plaintiff No. 1 has not filed any sketch copy to show the location of these plots sold to third parties and to show what is the actual extent of the land retained in his possession out of 1980 Sq. Yds. Further, from a perusal of Ex.A-2 registered sale deed, it appears that the partners of

AASC sold the land in their independent capacity, but not as partners of AASC, to first plaintiff, as such the partners had no right to sell any land in their independent capacity as the land was admittedly belonged to the firm. Thus, absolutely there is no iota of evidence placed before the Court to establish that on eastern side boundary of Ac. 2-00, still the land of vendors of plaintiff No.1 existing and the same was purchased by plaintiff No.1; as such plaintiffs cannot raise a plea that the land purchased by them is not part and parcel of Ac.2-00 guntas of land covered by mortgaged property but it is a separate property. Hence, the property claimed by the plaintiffs herein is the part and parcel of the property of Ac. 2-00 guntas of land for which the mortgage was created by the vendors of the plaintiff during the year 1982 even before the so called purchase by the plaintiff No.1 in the year 1983. However, the plaintiff No.1 who had purchased the property did not choose to enter the witness box. The evidence of General Power of Attorney suggesting that the plaintiff No.1 has not enquired about the title of their vendor i.e., whether the property is standing in the name of firm or the individuals, who sold the land to him, makes it clear that the first plaintiff without verifying the valid title of his vendors had purchased the property and therefore, he cannot claim any legal

right in respect of the land said to be purchased by him under Ex.A-2 sale deed, dated 12-12-1983. It was further observed by the trial Court that DW-1 pleaded his ignorance with regard to boundaries of Ac. 2-00 of property mortgaged with defendant No.2 and even he could not say about the extent of land given possession to his father by the Bailiff of the Court in respect of the mortgage property. No doubt, there are certain lacunae in the evidence of DW-1 as admittedly, he had no personal knowledge about the sale proceedings, which were conducted by the Court, but in the present case, the oral evidence of defendants is not carrying much weight as the documentary evidence itself is sufficient to say that 1980 Sq. Yds., of the suit property is part and parcel of the mortgaged property for which the sale certificate was issued. Even Ex.B-10 certified copy of delivery warrant of possession of the mortgaged property, along with sketch map, clinchingly proves that suit land is part and parcel of the Ac. 2-00 guntas of land kept under the mortgage to the defendant No.2. Anyhow, the plaintiffs must prove their case on the strength of their own case but cannot depend on the weakness of defendants' case.

14. Furthermore, at page Nos.18 & 19, the specific observations made by the trial Court are that the evidence of G.P.A. Holder of first

plaintiff has no validity in the eye of the law as Ex.A-1, original power of attorney, clinchingly proving that he is not specifically authorized to gave evidence on behalf of PW-1. The evidence, oral and documentary, let in by the plaintiffs is not helpful to their case to establish that they had any right in respect of the suit property as their vendor, AASC, had no valid right to convey any better title to the plaintiff No.1 after they created the mortgage on 22-11-82 which is even prior to the sale of property in favour of plaintiff No.1, which is no other than the subject matter of E.P. 5 of 2000 on the file of Senior Civil Judge, Huzurabad. Further, the trial Court observed that after the amendment of the C.P.C. in the year 1976 filing of a separate suit is barred and the matter in controversy is to be adjudicated under Order 21 Rules 99 of C.P.C by the executing Court. Admittedly, it is not the case of the plaintiffs that they have no knowledge about the earlier suit. If really they had any right or title in respect of the suit property which is nothing but part of Ac. 2-00 guntas of land mortgaged by their vendors, they ought to have raised objections under Rules 97 and 99 in the E.P. Proceedings.

15. The main attack in this appeal by the learned counsel for the appellants –plaintiffs is that the suit property is not part and parcel of Ac.2.00 guntas of land mortgaged by AASC and it is a separate

land existing on eastern side of mortgaged land. However, the plaintiff No. 1 did not enter into the witness box to prove the said factum before the trial Court nor the mortgagor was made as a party to the suit proceedings, who could have thrown much light on this issue. Though in O.S. No. 31 of 1985, the defendant No. 2, being plaintiff therein, did not mention the boundaries of Ac.2.00 guntas in the plaint, still they have mentioned in schedule about description of title deed of Ac.2.00 guntas in Sy. Nos.199 & 200 with factory and godown premises wherein AASC used to carry on its business. Further, the mortgagor, who filed E.A. No. 40 of 1997 challenging the sale proceedings in E.P. No. 13 of 1995 initiated by the mortgagee, did not state or plead that they have sold any property to the plaintiff No. 1. Although in the plaint pleadings it is pleaded that the plaintiff No.1, after purchase of 1980 sq.yds. in Sy.Nos. 199 & 200, sold an extent of 240 sq.yds. in Sy.Nos.199 & 26 2/3 sq.yds. in Sy. No. 200 to plaintiff No. 2 and also 255.5 sq.yds. to one Gogla Pushpawathi under a document, dated 30.06.1994 and another plot existing between plaintiff No.2 and said Pushpawathi, sold to one P. Venkaiah, the actual extent of the land, after such sale, that is remained in possession of plaintiff No. 1 is not specified in the plaint or in the evidence of plaintiffs. At one point of time, the plaintiffs

plead that the land mortgaged by AASC to the defendant No. 2 Bank is only to the extent of Ac.1.24 guntas and the remaining property was in possession of plaintiffs having purchased under Ex.A.2, again contrary to the said pleading, they plead that the actual land of Ac.2.00 guntas that was shown in O.S. No. 31 of 1985 is not existing on the ground. Although the plaintiffs dispute the actual extent and boundaries of the land mortgaged by the AASC to the defendant No. 2 Bank, certainly the Court would expect from them a sketch copy in order to show the location of the plots sold to third parties by plaintiff No. 1, including the plot sold to plaintiff No. 2, out of 1980 sq.yds. Furthermore, as rightly observed by the trial Court, a perusal of Ex.A.2 discloses that the sale deed executed in favour of plaintiff No. 1 by the partners of AASC is not in the capacity of partners of firm, but in their individual capacity. Admittedly, the suit land belongs to the firm and therefore, the partners cannot execute the sale deed in their individual capacity. Furthermore, Ex.B.10, delivery warrant of possession of the mortgaged property with sketch map, makes it clear that the suit land is part and parcel of the land to an extent of Ac.2.00 guntas kept under mortgage with the defendant No. 2. In these circumstances, trial Court has rightly held that the plaintiffs are not entitled for declaration and relief of

perpetual injunction against the defendants. The appeal fails and the same is liable to be dismissed.

16. In the result, the appeal stands dismissed confirming the judgment and decree dated 17.01.2008 in O.S.No.4 of 2002, on the file of learned I Additional District Judge, Karimnagar. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

Date: 19.06.2023
AS/TSR

Note: LR Copy to be marked.

B/o.
AS