

**\* THE HON'BLE SMT JUSTICE K. SUJANA**

**+ APPEAL SUIT No.1065 OF 2018**

**% 31.01.2024**

# Smt.B. Laxmibai,  
W/o.B. Balaji Prasad, Aged about 58 yrs,  
Sri Nilayam, Kalyan Nagar,  
Phase-I, Vengal Rao Nagar,  
Hyderabad

.. Appellant/Plaintiff

And

\$ Jaya Ram S/o.Not Known to plaintiff,  
Aged about 61 yrs, Occu : Bank Manager,  
(Andhra Bank), Peerjadiguda Branch,  
Boduppall, R.R.District & another

.. Respondents

! Counsel for the Appellant : 1. Sri Vedula Srinivas  
learned Senior Counsel  
appearing for Sri Jogram  
Tejavat, learned counsel  
on record

Counsel for respondents : Sri Muddu Vijay

< Gist :

> Head Note :

? Citations:

2003 (6) ALT 62 (DB)  
(2012) 1 SCC 656

**HIGH COURT FOR THE STATE OF TELANGANA  
HYDERABAD**

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Between :

Smt.B. Laxmibai,  
W/o.B. Balaji Prasad, Aged about 58 yrs,  
Sri Nilayam, Kalyan Nagar,  
Phase-I, Vengal Rao Nagar, Hyderabad .. Appellant

And

Jaya Ram S/o.Not Known to plaintiff,  
Aged about 61 yrs, Occu : Bank Manager,  
(Andhra Bank), Peerjadiguda Branch,  
Boduppal, R.R.District & another .. Respondents

**DATE OF JUDGMENT PRONOUNCED : 31.01.2024**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SMT JUSTICE K.SUJANA**

1. Whether Reporters of Local Newspapers : Yes / No  
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : Yes / No  
marked to Law Reporters/Journals
3. Whether her Lordship wish to : Yes / No  
see the fair copy of the Judgment ?

**THE HON'BLE SMT JUSTICE K. SUJANA****APPEAL SUIT NO.1065 OF 2018****JUDGMENT :**

This appeal is filed by the appellant being aggrieved by the judgment dated 04.06.2018 in O.S.No.285 of 2008 on the file of IV Additional District Judge, Ranga Reddy District at L.B.Nagar. O.S.No.285 of 2008 is filed by the plaintiff seeking declaration of title and for perpetual injunction against the defendants 1 and 2. The trial Court dismissed the said suit.

2. For the sake of convenience, the parties herein after are referred to as arrayed in O.S.No.285 of 2008.

3. The appellant herein is the plaintiff in O.S.No.285 of 2008. She filed the suit alleging that she is the absolute owner and possessor of the land admeasuring 300 Sq. yards in Sy.No.11/23, 11/27 and 11/25 of Khanamet Village, Rajendra Nagar Mandal, Ranga Reddy District; she purchased the same from one R. Limbia Nayak for a sale consideration of Rs.2,700/- through an unregistered sale deed dated 27.07.1982 and the said sale deed has been validated under Section 42 of the Indian Stamp Act, before the District Registrar, on 15.02.2007 and from the date of

purchase, she is in possession and enjoyment of the property. Originally the land covered by Sy.No.11 of Khanamet Village, Rajendra Nagar Mandal is held by Gurukul Ghatkesar Trust. The said trust was conducting its activities by earning money from the land held by it and in that process, the said trust has engaged the services of Limbia Nayak, who is the vendor of plaintiff. The name of the plaintiff's vendor's father is reflected in the pahani for the year 1966-67 as possessor. The said Trust through its GPA had executed a Gift settlement deed dated 08.06.1982 in favour of the vendor of the plaintiff in respect of Ac.0.27 guntas of land covered by Sy.No.11/23, 11/27 and 11/25. As there is ban on registration of sale deeds, the plaintiff has been enjoying the possession of suit property through sale deed dated 27.07.1982 and possession was delivered. Plaintiff also constructed a compound wall and two rooms in the schedule property, obtained electricity connection and name of the plaintiff is also shown in the revenue records, whereas the defendants along with their henchmen tried to interfere with the peaceful possession of the suit property on 15.03.2007 at 11.00 a.m. As such, she filed O.S.No.787 of 2007 on the file

of Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar, for perpetual injunction and the said suit was dismissed for not filing the process. Further the defendants without any right tried to interfere with the peaceful possession of the plaintiff. As such, she filed the present suit.

4. The defendant No.1 filed written statement denying the averments of plaintiff and according to him, he purchased the plaintiff schedule property from Gurukul Ghatkesar Trust under registered sale deed dated 05.03.1982 vide document No.1165 of 1982 and from the date of purchase he is in possession and enjoyment of the property. The defendant No.1 executed an agreement of sale in favour of defendant No.2 on 18.06.2002 agreeing to sell the said property. Thus, the plaintiff is not the rightful owner of the suit schedule property and defendant No.1 is the absolute owner of the property. Moreover, the sale deed of the defendant No.1 was executed by the Gurukul Ghatkesar Trust on 05.03.1982. The sale deed of defendant No.1 is earlier to the sale deed of plaintiff. Therefore, the Gurukul Ghatkesar Trust has no right to execute the sale deed again in favour of the plaintiff.

The sale deed of the plaintiff is not a valid one and it is a fabricated one. As such, prayed the Court to dismiss the suit. The defendant No.2 adopted the written statement filed by defendant No.1.

5. Basing on the pleadings, the trial Court framed three issues and decided that plaintiff is not entitled for the reliefs prayed.

6. To prove the case, on behalf of the plaintiff, plaintiff herself was examined as Pw.1 and Exs.A.1 to A.12 are marked on her behalf. The husband of the plaintiff was examined as Pw.2 and attesting witness to the sale deed was examined as Pw.3. On behalf of the defendants, the defendant No.2 was examined as Dw.1 and got marked Exs.B.1 to B.7 on their behalf. No evidence was adduced on behalf of the defendant No.1.

7. Heard Sri Vedula Srinivas, learned Senior Counsel appearing for Sri Jogram Tejavat, learned counsel for the appellant on record and Sri Muddu Vijay, learned counsel appearing for the respondents.

8. Learned counsel for the appellant would submit that the plaintiff is in physical possession of the property and she purchased the property from Limbia Nayak through an unregistered sale deed. As there is ban on registrations, plaintiff could not register the same. The said Limbia Nayak, acquired the property through unregistered gift deed which was executed by Gurukul Ghatkesar Trust. Therefore, the plaintiff is the rightful owner and possessor of the suit property. The trial Court without considering the same erroneously dismissed the suit. As such, prayed this Court to set aside the judgment of the trial Court by allowing the appeal.

9. Per contra, learned counsel for the defendants would submit that defendant No.1 purchased the suit property from its original owner i.e., Gurukul Ghatkesar Trust, prior to the document of plaintiff and also entered into an agreement of sale with defendant No.2. As the document submitted by the appellant is an unregistered one and the document of the defendants is registered sale deed, there is no illegality in the judgment of the trial Court and there are no merits in the appeal and hence, prayed the Court to dismiss the appeal.

10. Having regard to the submissions made by both the counsel, now the point for consideration is whether the appellant is entitled for declaration of title and perpetual injunction as prayed for ?

**POINT :**

11. There is no dispute that originally the land covered by Sy.No.11/23, 11/27 and 11/25 of Khanamet Village, Rajendra Nagar Mandal, Ranga Reddy District belongs to Gurukul Ghatkesar Trust. The said Trust was conducting its activities like imparting education etc. The suit schedule property is admeasuring 300 Sq. yards in Sy.No.11/23, 11/27 and 11/25 of Khanamet Village, Rajendra Nagar Mandal, Ranga Reddy District. The defendant No.1 purchased the plaint schedule property under registered sale deed dated 05.03.1982 from the GPA holder of the Gurukul Ghatkesar Trust which was registered in the year 1983 vide document No.1165/1983 which was marked as Ex.B.2. Subsequently, as per the order under G.O.Ms.No.703 Rev. (Endowment-II) Dept., dated 30.09.2000, the Government of Andhra Pradesh declared that the sale deed dated 05.03.1982 as null and void.



12. According to the plaintiff her vendor Limbia Nayak, was in long standing possession of the property and for the services rendered by him, the Gurukul Ghatkesar Trust has executed an unregistered gift deed on 08.06.1982 in favour of Limbia Nayak in respect of Ac.0.27 guntas of land and he in turn sold the suit property to the plaintiff under an unregistered sale deed dated 27.07.1982 and delivered possession to her. Earlier when the defendants tried to disturb the possession of plaintiff, she filed O.S.No.787 of 2007 on the file of Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar, seeking permanent injunction, but the same was dismissed for non-payment of process. The contention of the learned counsel for the plaintiff is that the document proves that plaintiff purchased the property and she is in possession of the same. The plaintiff has also submitted an application to the Urban Land Ceiling Authority for regularization of sale deed and the sale deed relied on by the defendants i.e., Ex.B.2 was cancelled, thus, the original of Ex.B.2 is non-est. Thus, the defendants have no right over the plaint schedule property.

13. On the other hand by virtue of Exs.A.2 and A.3 the plaintiff has got right and title over the plaint schedule property.

14. The contention of learned counsel for the defendants is that Gurukul Ghatkesar Trust, has no authority to execute the gift settlement deed under Ex.A.2 and the sale deed under Ex.A.1 are unregistered documents. Even those documents are not validated and no title is passed and those documents are in admissible in evidence.

15. Both the parties herein are claiming rights over the property by virtue of their proposed sale deeds from their vendors. As the suit is filed by the plaintiff, she has to prove her case that she is the owner and possessor of the property and the defendants have entered into her property without any right. According to the plaintiff as there was ban to register the suit schedule property, the sale deed under Ex.A.1 has not been registered, whereas, Exs.A.1 and A.2 have been validated, therefore, they are admissible in evidence. Sofar, the Gurukul Ghatkesar Trust people have not been questioned the execution of the gift settlement deed under Ex.A.2 and the defendant No.1 did not come to the

witness box, therefore, the defendant No.1 cannot challenge the same. The weaknesses of the defendants cannot give any right to the plaintiff. The plaintiff has to prove her case independently. As seen from the documents filed by the plaintiff, Ex.A.1 is an unregistered sale deed for a total sale consideration of Rs.2,700/- and the recitals of Ex.A.1 would show that the stamp duty of Rs.1050/- has been levied by the District Registrar of Ranga Reddy and there are two witnesses to the said document. Ex.A.2 is an un registered gift settlement deed dated 08.06.1982 executed by the Gurukul Ghatkesar Trust, rep., by its President Sri B. Kishan Lal in favour of Limbia Nayak to an extent of Ac.0.27 guntas out of love and affection and towards the services rendered by him for the past several years. To prove the possession, plaintiff got marked Exs.A.3 to A.10 which shows that appellant obtained service connection and also the photographs would show that she constructed a compound wall and two rooms in the schedule property. The plaintiff also filed Ex.A.12 to show that she applied for regularization of the subject property and copy of application for allotment of excess land taken possession by the Government under Urban Land

Ceiling (C and R) Act, 1976 and it was obtained by the plaintiff under Right to Information Act, wherein the land was shown as 250.80 Sq Mtrs. in Sy.No.11/23, 11/25 and 11/27.

16. Section 54 of the Transfer of Property Act (for short 'the Act') deals with sale of immovable properties. According to Section 54 of the Act in the case of tangible immovable property of the value of one hundred rupees and upwards or in the case of revision or other intangible things, can be made only by registered instrument. Therefore, the statute requires a registered sale deed for effecting sale. In this case, the plaintiff has examined Pws.2 and 3. Pw.2 is the husband of plaintiff and Pw.3 is an attesting witness. Pw.1 reiterated her contentions as in the plaint by way of chief affidavit and in cross examination she admitted that there is ban on registrations therefore, she could not get registration of sale deed. Pw.3 deposed that he is a witness and attested the sale deed and Ex.A.2 is an unregistered gift deed and according to him, plaintiff is in possession of the suit schedule property.

17. On behalf of the defendants, the defendant No.2 was examined as Dw.1. In cross-examination he deposed that he do not know whether in the year 1982 the Gurukul

Ghatkesar Trust people had obtained grampanchayat layout in respect of part of their land as they were in need of money, and he also deposed that he do not know about execution of Ex.A.2 gift deed in favour of Limbia Nayak by the GPA of Gurukul Ghatkesar Trust.

18. The plaintiff relied on Exs.A.1 and A.2 to show title over the suit schedule property. Admittedly, Exs.A.1 and A.2 are the unregistered documents and to that effect their defense is that there is ban on registration. In support of her contention, no document is filed to prove that the Government banned registration during that period. The defendants contention is that Gurukul Ghatkesar Trust cannot execute gift deed as per provisions of the Act 17 of 1966 and Act 30 of 1987 and there is a judgment of this Court in **The Secretary to Government Vs Sri Swamy Ayyappa Co-operative Housing Society Limited and others**<sup>1</sup>, wherein batch of writ appeals and writ petitions are filed before this Court in respect of the properties of the Gurukul Ghatkesar Trust and the Division Bench discussed

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<sup>1</sup> 2003 (6) ALT 62 (DB)

various aspects including applicability of provisions of Act 17 of 1966 and Act 30 of 1987 and also mode of alienation of the Gurukul Ghatkesar Trust property and held that the alienation of immovable property belongs to the Gurukul Ghatkesar Trust made by its President is totally void and in-operation.

19. In view of the judgment of this Court, it is made clear that the Act 17 of 1966 and Act 30 of 1987 are applicable to the Gurukul Ghatkesar Trust. Therefore, the alienation of immovable property belonging to any charity, institution or endowments without prior sanction of the Government or Commissioner of Endowment shall be null and void, whereas the learned counsel for the plaintiff submits that even though it is applicable there are some observations in the judgment that the transactions prior to 30.09.2000 would not affect. Though the transaction between the plaintiff and Limbia Nayak was before 2000, which is an unregistered sale deed, as the property is valued about Rs.100/- which is an immovable property, unregistered sale deed cannot confer any right on the plaintiff as she has purchased the property from Gurukul Ghatkesar Trust. Therefore, Exs.A.1 and A.2

are no way useful to the appellant to prove that she purchased the property for valid sale consideration and Ex.A.12 is the application of the plaintiff for regularization of her property. Further, the Apex Court in *Suraj Lamp & Industries (P) Ltd., Vs State of Haryana*<sup>2</sup>, wherein it was observed as follows :

“15. ....

“18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

20. This Court in **Swamy Ayyappa Co-operative Housing Society Limited** case observed that the writ petitioners have to approach the Commissioner of Endowments as well as the Government seeking appropriate relief. In the present case,

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<sup>2</sup> (2012) 1 SCC 656

there is no evidence on record to show that Limbia Nayak, or the plaintiff have applied to the Commissioner of Endowment or Government to regularize their property, whereas they purchased urban ceiling land. Further there is no evidence to prove that Gurukul Ghatkesar Trust land was acquired by the Urban Land Ceiling Authority, as such Ex.A.12 is not useful to prove the case.

21. As there is no evidence to prove that the plaintiff or her vendor complied the directions issued by this Court in **Swamy Ayyappa Co-operative Housing Society Limited** case and there is no evidence on record to show that the Commissioner of Endowment or the Government had issued any sanction order in respect of the plaint schedule property. Even on Ex.A.12 application there is no order passed by the Urban Land Ceiling Authority. As such there is no evidence on record to prove that plaintiff is the absolute owner of the suit schedule property and therefore she is not entitled for the relief of declaration.



22. According to the plaintiff, she is in possession and enjoyment of the plaint schedule property by virtue of Exs.A.3 to A.10 and on the other hand, the contention of the defendant No.2 is that he is in possession of the plaint schedule property by virtue of Ex.B.2 sale deed and Ex.B.3 to B.6 photographs. Both the parties are claiming possession over the suit schedule property. The defendants also relied on the photographs under Exs.B.3 to B.6. To grant injunction possession must be lawful. The documents filed by the appellant i.e., electricity bills though showing possession, injunction cannot be granted as he failed to prove the title. It is needless to say dismissal of suit does not confer any right to the defendant. To decide possession it has to be lawful possession, whereas Exs.A.1 and A.2 are not proving the ownership of plaintiff. As such, this Court cannot grant injunction in favour of the plaintiff. There is no illegality in the judgment passed by the trial Court in dismissing the suit for grant of perpetual injunction. There are no merits in the appeal and hence the appeal is liable to be dismissed. The point is accordingly, answered.

23. Accordingly, the Appeal Suit is dismissed. There shall be no order as to costs.

Miscellaneous applications, if any, pending shall stand closed.

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**K. SUJANA, J**

Date :31.01.2024  
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Note : L.R.Copy to be marked