

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

+ Appeal Suit No.305 OF 2019

% 08.04.2024

Between:

G. Eswara Vana Prasad

Appellant

Vs.

G. Krishna Chandra Kumar

Respondent

! Counsel for Appellants

: Sri Akkam Eshwar

^ Counsel for Respondents

: Sri B. Arjun

<GIST:

> HEAD NOTE:

? Cases referred : -NIL-

THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**A.S.No.305 OF 2019****JUDGMENT:**

Aggrieved by the judgment and decree dated 26.04.2019 in O.S.No.1078 of 2013 (hereinafter will be referred as 'impugned judgment') passed by the learned II Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar (hereinafter will be referred as 'trial Court'), the defendant preferred the present appeal to set aside the impugned judgment.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

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

a) The plaintiff filed O.S.No.1078 of 2013 against defendant claiming recovery of possession and damages in respect of suit schedule property. The brief averments of the plaint are as under:

i) Plaintiff is the owner of i.e., House bearing No.S2, C-185

with H.No.6-3-1691/185 in MIG Category, Phase III, Sachivalaya Nagar, Ranga Reddy District having acquired the same by virtue of gift settlement deed bearing document No.4926 of 2003 dated 26.04.2003 executed by his father. The defendant, who is the elder brother of the plaintiff was doing a petty business till 2003 and was not maintaining relationship with the plaintiff and his family members. The defendant casted an evil eye on the hosue of the plaintiff and started troubling the plaintiff.

ii) The parents of the plaintiff used to reside in the first floor of the House bearing No.S2, C-185 with H.No.6-3-1691/185 and defendant used to visit them frequently and harassed them. The mother of the plaintiff died in April, 2003 and as the elder son the defendant came to the house of plaintiff to perform final rites and started residing in the portion of first floor of the said house admeasuring 697.27 square feet (hereinafter will be referred as suit schedule property). Despite several requests the defendant did not vacate the suit schedule property. In the year 2007 the children of defendant

approached the plaintiff and sought help for their educational loan and out of affection the plaintiff helped them for getting an educational loan by offering the suit schedule property as security. The defendant defaulted in repayment of the loan instalments and created problems to the plaintiff.

iii) IN the year 2011 in order to avoid the nuisance, the plaintiff accepted to help the defendant in paying some money, if he vacates the suit schedule property. Despite receipt of money, the defendant did not vacate the property and in 2011 he assaulted the father of the plaintiff. The defendant is liable to vacate the suit schedule property as the plaintiff is the owner of the suit schedule property and the defendant is liable to pay an amount of Rs.1,00,000/- towards usage charges and Rs.20,000/- towards damages. Hence, this suit.

b) In reply to the plaint averments, the defendant filed written statement, the brief averments of which are as under:

i) Plaintiff filed the suit without showing the extent of constructed area. While the father of the plaintiff was in grief

and depression after the death of his wife, the plaintiff played fraud and forcibly got executed a gift settlement deed in his name. The children of the defendant and other grandchildren are entitled for a share in the suit schedule property.

ii) The defendant has spent money for construction of the property by selling his land situated at Bheemavaram. The defendant is staying in the house of his father and he has invested money for extension of the ground floor and first floor. The plaintiff failed to pay the agreed amount and he failed to pay the instalments to SBH and only in order to harass the defendant, he filed a false suit. Hence, the defendant prayed to dismiss the suit.

c) Based on the pleadings of both the sides, the trial Court has framed the following issues:

1. *Whether the plaintiff is entitled for recovery of possession of the suit property from the defendant?*
2. *Whether the plaintiff is entitled for any usage charges, if so, to what extent?*
3. *To what relief?*

d) The plaintiff, in support of his contentions, examined PWs

1 and 2 and got marked Exs. A1 to A11. On the other hand, the defendant got examined DWs 1 to 3 and got marked Exs. B1 to B6. The trial Court on appreciating the evidence on record, has decreed the suit by directing the defendant to vacate and hand over the vacant possession of the suit schedule property to the plaintiff within two months from the date of judgment apart from directing the defendant to pay Rs.1,20,000/- to the plaintiff towards usage charges and damages.

4. Aggrieved by the judgment and decree, the defendant filed the present appeal.

5. Heard both sides and perused the record including the grounds of appeal.

6. This is a suit filed by younger brother (plaintiff/PW1) against his own elder brother (defendant/DW1) for delivering vacant possession in respect of suit schedule property that was gifted by their father to his younger son. It is not the case of the defendant that the suit schedule property is the only property acquired by their father and that they are seeking

partition of the same. It is the case of the plaintiff that the defendant is not only harassing his father but also harassing him by illegally occupying the suit schedule property. It is further case of the plaintiff that though the defendant availed educational loan for his daughter by making the plaintiff and his father as sureties, failed to repay the loan amount, which is being paid by the sureties i.e., the plaintiff and his father. It is the case of the plaintiff that in the year 2011 the defendant beat his father and in this connection the father of the plaintiff reported the matter to the Police, Vanasthalipuram. It is also the contention of the plaintiff that defendant is creating nuisance by obstructing ingress and egress into the house by parking his car in front of the main gate and he used filthy language on all occasions without caring for his social obligation. It is further grievance of the plaintiff that since his children have grown up, it is not sufficient to accommodate all his family members including his father. Now, it is to be adjudicated as to whether the defendant has caused some nuisance to the plaintiff and his father that compelled them to file a suit seeking delivery of vacant possession of the suit

schedule property.

7. It is the specific case of PW2 i.e., father of the plaintiff that he is being taken care by his younger son and his elder son i.e., DW1 never came forward to oblige his responsibilities towards him and his family and DW1 never maintained any relationship with himself or PW1. PW2 also deposed that defendant has created lot of nuisance in front of his house number of times and threatened him and the plaintiff for which PW2 reported the matter to the Vanasthalipuram Police Station. PW1 deposed that the defendant by raising his voice to the extreme level is creating nuisance by stating that he can go to any extent to cause harm to him. The evidence of PWs 1 and 2 is convincing and corroborating with each other to establish that the defendant is causing nuisance in the house and thereby responsible for the inconvenience caused to the plaintiff and his father. Even for the sake of arguments, if we assume that the defendant is not causing any nuisance in the suit schedule property, it is to be seen that the defendant has no rights over the self acquired property of PW2. If the

defendant is continuing to reside in the suit schedule property against the free consent of his father i.e., PW2 without any right, title or interest, then certainly the defendant is obliged to hand over the vacant possession of the suit schedule property to the plaintiff, who is the rightful owner of the suit schedule property by virtue of Ex.A1.

8. The learned counsel for the defendant contended that the trial Court erred in decreeing the suit without appreciating the facts and circumstances of the case in proper and perspective manner. As seen from the impugned judgment, the trial Court has elaborately discussed the evidence adduced on behalf of either parties and also the facts and circumstances of the case from paragraph Nos.7 to 17 while answering the issues. Thus, the above contention of the learned counsel for the defendant holds no water.

9. The other contention of the learned counsel for the defendant is that the evidence of PW2 is not credible as he is living with PW1 and he is influenced by the plaintiff. It is to be seen that PW2 is not an illiterate and he is a retired employee

from Andhra Pradesh Secretariat and it is not an easy task to influence a person, more particularly, a retired government employee, until and unless he suffers from some psychological disorder. There is no evidence before this Court that PW2 is suffering from any such psychological disorder. Even otherwise, apart from the plaintiff, the defendant is also staying in the same premises, where the plaintiff and defendant are residing i.e., the plaintiff and PW2 are staying in ground floor and defendant is staying in portion of the first floor i.e., suit schedule property. If at all the plaintiff has got the opportunity of influencing his father, defendant is also having that opportunity of influencing his father i.e., PW2. Further, the evidence of PW2 was subjected to cross examination by the learned counsel for the defendant and any amount of alleged influence by the plaintiff upon his father would have been elicited in the said cross-examination.

10. It is further contention of the learned counsel for the defendant that the trial Court ought to have seen that the gift deed is said to have been executed immediately after the death

of mother of the parties which itself shows that the said deed was executed fraudulently while his father was in depression. It is to be seen that the defendant has been suspecting each and every aspect with ulterior motive without any basis because on one hand he is suspecting the evidence of PW2 not credible as he is living in the company of plaintiff and on the other hand he is suspecting Ex.A1 gift deed merely because it was executed immediately after the death of mother of plaintiff and defendant. If at all the plaintiff has influenced his father while giving evidence and gift deed was executed while PW2 was under depression, the defendant could have established the same by examining the relevant witnesses but there is no such instance in the case on hand. Mere assertions will not suffice to establish a contention.

11. The learned counsel for the defendant further contended that the trial Court erred in holding that PW2 himself examined and stated that he voluntarily executed the gift deed in favour of plaintiff ignoring the fact that PW2 is residing with the plaintiff. The best person to depose about execution of a gift

deed is the donor himself. The donor under Ex.A1 is none other than father of plaintiff and defendant and he was examined as PW2. It is the contention of the defendant that the plaintiff got executed the gift deed in his favour while his father was under depression on the demise of his wife. But it is to be seen that mother of plaintiff passed away in April, 2003 and whereas PW2 was examined in the year 2016 i.e., after thirteen years. Admittedly, Ex.A1 was executed on 26.04.2003. If at all the father of the plaintiff executed Ex.A1 under depression on the demise of his father, certainly he would have repented and denied about the execution of gift deed under his free will and consent when he was examined before the Court after 13 years after the execution of Ex.A1 and would have revoked the gift made to the plaintiff. But PW2 has categorically admitted in his cross examination that he has executed the gift deed in favour of plaintiff out of his free will. Hence, the above contention of the learned counsel for the defendant will not sustain.

12. It is further contended by the learned counsel for the

defendant that the trial Court grossly erred in not believing the evidence of DWs 2 and 3, who categorically stated that the appellant contributed the amounts for construction of the first floor. DW2 is none other than the wife of defendant and obviously she is supposed to support the contention of defendant. DW2 deposed in his chief examination that they are not having any financial problems and apart from the suit schedule property, they are not having any other immovable properties. But in the cross examination she admitted that apart from suit schedule property, they are having other immovable properties. DW3 is uncle of the defendant and he deposed that G.N. Setty (PW2) asked him to see party to sell three acres of land that is in the name of DW1 as he is returning back from Madras and that PW2 needs money to construct extra rooms in the first floor. DW3 further deposed that he searched a party and they sold the land for Rs.4,000/- per acre and the amount was taken by PW2. But in the cross examination, he admitted that he came to know about the transactions of the defendant through the defendant. Thus, the evidence of DW3 is hearsay, which is not admissible in law.

Thus, the evidence of DWs 2 and 3 is filled with several contradictions and omissions, as such, their evidence is not reliable to come to a conclusion that the first floor of the suit schedule property was constructed with the contributions made by the defendant with the amount received from the sale of his property at Chennai.

13. Furthermore, it is to be seen that the first floor of the suit schedule property was constructed in the year 1991 and whereas, the evidence adduced on behalf of defendants in the form of DWs 1 and 3 discloses that the property of the defendant at Chennai was in the name of defendant till the year 1999. Hence, the question of selling the said property at Chennai prior to 1991 and contributing the same for the construction of the first floor of the suit schedule property by the defendant does not arise. Even otherwise, it is admitted fact that the suit schedule property is the self acquired property of PW2 and in such circumstances, the defendant cannot claim that he has rights over the suit schedule property merely because he has contributed for the construction of the first

floor of the suit schedule property. It is the contention of the plaintiff that he has constructed first floor and on the other hand PW2 deposed that he has constructed first floor with his money. Apart from the above two statements, the defendant stated that he has contributed for construction of the first floor by selling his house situated at Chennai. The primary aspect that has to be considered at this juncture is since the suit schedule property is the self acquired property of PW2, the said property can be used by PW2 as per his whims and fancies and accordingly PW2 has executed gift deed in favour of plaintiff. It is pertinent to note that plaintiff has asserted that he provided educational loan to the daughter of the defendant. PW2 deposed that himself and plaintiff stood as sureties for the educational loan of daughter of the defendant. Even the defendant as DW1 admitted about the factum of providing educational loan by the plaintiff to his daughter. When the defendant is not having capacity even to provide educational loan to his daughter, the question of defendant contributing amount for construction of first floor of the suit schedule property is very much doubtful.

14. It is the specific contention of PW2 i.e., father of plaintiff and defendant that he gave suit schedule property to the plaintiff, 3 to 4 acres of land to his daughter and cash of Rs.1,50,000/-, one car and a scooter to the defendant. Thus, an inference can be drawn that a settlement was done among the family members in respect of movable and immovable properties as evident from the deposition of PW2.

15. The learned counsel for the defendant specifically contended that the children and other grandchildren of PW2 have right over the suit schedule property. On one hand the defendant is admitting about execution of gift deed by his father in respect of suit schedule property in favour of plaintiff and on the other hand he is contending that the children grandchildren are having rights over the suit schedule property. If at all the gift deed executed by PW2 in favour of PW1 is not valid or proper, then what prevented the defendant from challenging the validity of gift deed in accordance with law is not explained by the defendant.

16. It is pertinent to note here that during the course of cross examination of PWs 1 and 2, the defendant gone to the extent of questioning the title of the father of PW1 in respect of suit schedule property by eliciting as to how the suit schedule property was allotted to PW2 and when it was allotted and when the said property was registered in the name of PW2 and the extent of property etc. On one hand, the defendant admitted that his father is the owner of the property and on the other hand he is trying to elicit the particulars of the suit schedule property and thereby creating doubt about the title and ownership of PW2 over the suit schedule property.

17. DWs 1 and 2 have categorically deposed that they have no financial problems. If at all the defendant was in good financial position, there is no necessity for the plaintiff and his father to pay the installments of educational loan obtained by the defendant for his daughter. PW2 deposed that he has been paying the installments from his pension. PW2 further deposed that on the continuous insistence of the defendant, he gave substantial amount out of his earnings and savings and

ancestral belongings to the defendant but he being spendthrift mismanaged all the family affairs and also money matters. PW2 further deposed that due to conduct of the defendant, his wife was mentally upset and expired in the month of April, 2003. PW2 in his chief examination affidavit has categorically explained the reasons for gifting the suit schedule property to the plaintiff rather than to the defendant. PW2 deposed that seeing his family position and defendant's misdeeds and mildness of the plaintiff, who is very obedient to all elders, he thought it is expedient to give his house to the plaintiff. He further deposed that his second son alone has been enjoying the property as absolute owner and possessor and first son i.e., the defendant is no way concerned with any portion of the house. Thus, the trial Court considered all these aspects and has rightly decreed the suit in favour of plaintiff and against the defendant.

18. Though the appellant has raised several grounds, there is no convincing and cogent material to establish those grounds to succeed in the appeal. Thus, this Court does not find any

necessity to interfere with the well reasoned judgment passed by the trial Court.

19. In view of the above facts and circumstances, this Court do not find any merits in the appeal to set aside the impugned Judgment and in fact, the trial Court has elaborately discussed all the aspects and arrived to a proper conclusion.

20. In the result, this appeal is dismissed. There shall be no order as to costs.

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

JUSTICE M.G. PRIYADARSINI

Date: 08.04.2024

Note: LR Copy to be marked.
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