

IN THE COURT OF THE SENIOR CIVIL JUDGE: AT: MANTHANI.

**PRESENT: SRI A. JAYA RAJU,
SENIOR CIVIL JUDGE,
MANTHANI.**

Friday, the 05th day of January, 2018

A.S. NO. 01 OF 2015

BETWEEN:

Gattu Narsimha Prasad, S/o. Sri Ramanna, 39 years,
Occ: Software Engineer, R/o. Presently residing in USA
petitioner represented by his father and regd. GPA
holder Sri. Ramanna, S/o. Gattu Bapu, permanent R/o.
11-41/4, AP&T Colony, Dilsuknagar, Hyderabad, Pin
500060.

...Appellant/Plaintiff.

A N D

Ramadagu Maruthi Rao, S/o. Kishtaiah, 50 years, Occ:
Teacher, R/o. H.No.10-12, Mandate street Manthani,
Karimnagar.

...Respondent/defendant.

On appeal from the judgment and decree dated 27.08.2015
in OS No.60 of 2006 on the file of Junior Civil Judge, Manthani.

Between:

Gattu Narsimha Prasad

...Plaintiff.

A N D

Ramadagu Maruthi Rao

...Defendant.

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This appeal is coming before me in the presence of Sri K.V.L.N.Hari,
Advocate for Appellant and of Sri C. Raman Kumar Reddy, Advocate for the
Respondent, having been heard and having stood over consideration to this
day, the Court made the following:

:: J U D G M E N T ::

- 1.** This appeal is filed by the appellant challenging the judgment and decree passed by the Junior Civil Judge, Manthani in OS 60/2006 dated 27.08.2015.
- 2.** The appellant herein filed OS 60/2006 against the respondent herein for declaration and perpetual injunction.
- 3.** For the sake of convenience, the parties are referred to as plaintiff and defendant as arrayed in the trial court.

4. The appellant filed OS 60/2006 against the defendant for declaration of title and perpetual injunction (the plaintiff filed the suit through his GPA holder, Gattu Ramanna, who is no other than father of the plaintiff).

5. The brief case of the plaintiff is as under:-

The plaintiff is the absolute owner and possessor of the open land adm. 118.51 Sq. Mts situated at Tammacheruvukatta Street, Ankamma Mula in Manthani (the land herein after will be referred as suit land). Originally, the suit land house bearing No.10-65, belonged to Gattu Savitri who was mother of the plaintiff and who acquired the suit property by way of registered will deed executed by Suvarna Mallanna on 15.09.1972, who was her uncle. The suit land is the absolute Sridhana property of Gattu Savitri. After the death of the Gattu Savithri on 29.01.1984, the plaintiff being son and class-I legal heir succeeded the suit land. During the life time of the Gattu Savitri she bequeathed her entire properties to the plaintiff. The house bearing No.10-65 was mutated in the Gram Panchayath records in the name of plaintiff. Since the suit land is an open land it was not mutated but under legal constructive possession of the plaintiff as on the date of filing suit.

6. The next thing that the plaintiff submits is, on 05.11.2004 the plaintiff made an application with the Gram Panchayath Manthani (Gram Panchayath will be referred herein after as GP) for obtaining permission for construction of compound wall around the suit land. Then the plaintiff learnt that the defendant too applied for permission on 25.10.2004 for construction of the compound wall around the suit land. As soon as the plaintiff came to know about the acts of the defendant to grab the suit land with some fabricated documents, the plaintiff had the

legal notice issued to GP who in turn advised the plaintiff on 24.02.2006 to approach the court of law.

7. The next plea of the plaintiff is that on 10.07.2006, when the plaintiff was getting the suit land leveled through his GPA holder, the defendant tried in vain to grab the suit land as the plaintiff offered resistance to defendant, but the plaintiff has apprehensions that the defendant may at any time in the future dispossess him. Though the plaintiff approached the police, police expressed their inability on the ground of it's being in civil matter. Hence, the suit.

8. On the contrary the plea of the defendant in his written statement is as follows:

That the plaintiff is the owner and possessor of the open land measuring 118.51 Sq.Mts i.e., suit land and he inherited it from his mother being legal heir is false. That the mother of the plaintiff executed a simple will deed in favour of the plaintiff in respect of all her properties and plaintiff enjoined constructive possession over the suit land also false.

9. The next thing what the defendant pleads is, the house bearing No.10-65 was alone mutated in that name of plaintiff in GP records on the strength of registered will deed, but plaintiff has nothing to do with the suit land. The suit land is situated on the side of the H.No.10-42, but not on the side of H.No.10-65. The registered will deed was no reference of open land i.e., suit land. The land mentioned in registered will deed may be of the land annexed to the H.No.10-65, but not the suit land.

10. Other plea of the defendant is, the alleged will deed purported to have been executed by Gattu Savitri states that the house and peradu (unnumbered and undescribed) shall devolve upon her husband after her death and then upon her son who is plaintiff herein. But, when father

of the plaintiff is still alive how can the plaintiff becomes absolute owner of the suit land?, is another plea of the defendant.

11. Further plea of the defendant is, the property belongs to a Hindu female devolves upon her sons, daughters and husband equally as per Sec. 15 of Hindu Succession Act. The plaintiff in this suit has got two sisters namely, Pramodini and Praveena besides his father Gattu Ramanna. The alleged property of Gattu Savitri i.e., mother of the plaintiff, under will deed, in that case, shall devolve upon plaintiff and his two sisters and upon his father Gattu Ramanna equally. Therefore, the plaintiff alone does not have locus standi to file the suit. The question of succession arises only when there is no testation. The next thing the defendant submits is, on the one hand plaintiff pleads that he is the only class-I legal heir and on the other hand he pleads that his mother executed will deed which is mutually contradictory and destructive. As a matter of fact, says the defendant that mother of the plaintiff has no claim over the suit land and there can not be any will deed, but the plaintiff filed the suit with fabricated will deed.

12. Except admitting the fact that GPA holder is the father of the plaintiff and husband of Gattu Savitri and the H.No.10-65 alone was mutated in GP and mother of plaintiff died on 29.01.1984 and defendant applied for permission on 25.10.2004 to construct compound wall and on 24.02.2006 the GP Authorities advised both the plaintiff and the defendant all other pleadings of the plaintiff are denied by the defendant.

13. Additionally, what the defendant pleads in his written statement is, the suit land bounded on the east, west, north and on the south by the open lands of Illendula Murali, Choppakalla Pullaiah, Illendula Muraly and Road respectively, was purchased by the mother of the defendant through simple sale deed from Suvarna Mallaiah S/o. Rajalingam on

24.03.1972 for valuable consideration, Ramadugu Shantamma enjoyed the suit land and after her death the defendant became absolute owner and possessor being the only son. On 18.10.1993, the defendant obtained permission from GP Manthani for construction of compound wall around the suit land. Subsequently, on 07.05.2005 the defendant had the simple sale deed impounded in the office of RDO Manthani by paying required fee of Rs. 4,671/- and thus got the simple sale deed legalized.

14. Basing on the above pleadings, the trial court settled the following six issues:-

(i) Whether the plaintiff has succeeded the suit property by virtue of any will deed?

(ii) Whether the said will deed is proper and validly executed?

(iii) Whether the defendant has succeeded the suit land?

(iv) Whether the suit is bad for non joinder of proper and necessary parties?

(v) Whether the plaintiff is entitled for relief of declaration and injunction?

(vi) To what relief?

15. During the course of trial, the plaintiff and three other witnesses were examined as Pws1 to 4 on behalf of the plaintiff and ten documents (Ex.A1 to A10) were exhibited. On behalf of the defendant, defendant himself got examined as dw1 and exhibited 8 documents (Ex.B1 to B8).

16. After appreciation of oral and documentary evidence on record the trial court dismissed the suit. On which the present appeal is filed.

17. The grounds of appeal in brief are as follows:

The trial court missed the point of appreciating material placed before it and passed the judgment and decree dancing to the tune of the

defendant. The trial court did not take into account the evidence of Pws1 to 4 and Ex.A1 to A10, but decided the matter depending on the documents filed by the defendant. The trial court erroneously took up the issues 1 to 5 jointly and decided. The dispute is not between the plaintiff and his father or his sisters, but between the plaintiff and the defendant but the trial court gave wrong findings that the plaintiff will not have any right over the suit land as long as the father of the plaintiff is alive since the suit land devolves upon the father of the defendant as per will deed Ex.A3. The next thing is, it is for the legal heirs of the Gattu Savitri whether to claim rights in her property or not. But the defendant has nothing to do with property of the Gattu Savitri, but the trial court missed that point and gave wrong findings as if there is a title dispute among legal heirs of the mother of the plaintiff, Gattu Savitri only basing on wrong assumptions. The next contention of the plaintiff is that even according to the pleadings of the defendant in WS, he obtained permission from GP in

the year 1993, but the trial court missed the point of noticing how the defendant obtained permission in his name when his mother was alive. Further it has been contended that the trial court lost the sight of the evidence of Pw1 wherein he said clearly that he had given all his properties and gave the finding that the suit land does not devolve upon the plaintiff when his father is alive. It has next been contended that instead of placing reliance on the unchallenged documents i.e., Ex.A1 and A10, the trial court placed reliance on the Ex.B1 to B8 GP records and simple sale deed which will not create any title to the defendant. Therefore, the judgment and decree passed by the trial court is erroneous, against the law and facts on record and liable to be set aside.

18. Neither the plaintiff nor the defendant adduced either oral or documentary evidence in this appeal.

19. Heard arguments and perused the record.

20. From the findings of the trial court and points raised by the plaintiff in this appeal, the following points come up for consideration.

(i) Whether the plaintiff does not have any right over the suit land by virtue of will deed Ex.A3 during the life time of his father Ramanna?

(ii) Will the suit become bad for non joinder of proper and necessary parties?

(iii) Is it Ex.A3 or simple sale deed, Ex.B4 that stands good?

(iv) Whether the plaintiff is entitled for declaration of title and perpetual injunction?

(v) Whether the judgment and decree passed by trial court is liable to be set aside?

21. The plaintiff testified in his chief affidavit in tune with his pleadings. Pw2 to 4 who are examined on behalf of plaintiff testified supporting the suit of the plaintiff.

Now let us see what the defendant had elicited during the cross examination of Pw1. Pw1 admitted in his cross examination that H.No., extent, measurements and location are not mentioned in Ex.A2. Pw1 next admitted that his wife has bequeathed her properties to him and upon his death these properties devolve upon his son. Pw1 further testified that he had transferred his entire properties in the name of his son (plaintiff) as such he filed the suit, but there is no registered document to that effect. It has further been elicited that Ex.A4 refers only to the extent of deletion of his name in respect of H.No.10-65. The suggestion made by the defendant that his son (plaintiff) had no locus standi to file this suit, his wife has not signed on Ex.A2, Ex.A3 is fabricated document have all been denied by Pw1. The another suggestion made by the defendant that the land mentioned under Ex.A1 and suit land are different has also been denied by Pw1.

22. Rajashekar Rao, Pw2 testified to have attested the will deed dated 07.01.1984 executed by mother of the plaintiff.

During the course of his cross examination he testified that he signed on Ex.A2 and it was prepared at hospital, but it is not mentioned in the will to have been scribed in hospital. Pw2 denied to have made his signature at residence and it is fabricated document.

23. Radha Krishnaiah, Pw3 testified that he had attested Ex.A1 will deed executed by Suvama Mallaiah in favour of Gattu Savitri. During the course of his cross examination he testified to have signed on Ex.A1 before Sub-Registrar Peddapally.

24. Just as Pw1 testified in tune with his pleadings, so also, the defendant testified in his evidence in tune with his written statement.

Now let us see what has been elicited from Dw1 in his cross examination. It has been elicited in the cross examination that house and backyard existed separately. Dw1 admitted that Ex.A1 has reference of open land and boundaries of the open land of the house mentioned separately in Ex.A1. It is also admitted by Dw1 that there has been no structures in the open land at any time. He further testified that one Venkatareddy was the scribe of Ex.B4 and one Kistaiah was the attester, but both of them died. Dw1 admitted that in Ex.B4 boundaries of the property and locality of the property have not been mentioned. Dw1 further testified that when Ex.B1 was obtained his mother was alive. The suggestion made by plaintiff that Ex.B1 was obtained basing on the fabricated document has been denied. He further testified that when he applied for permission disputes had been running. It has been admitted by the Dw1 that plaintiff filed objections when he applied for permission for the second time. Dw1 denied the suggestion that he created false documents by fabrication to grab the land of the plaintiff.

25. It is in the light of the oral and documentary evidence the truths and untruths have to be unearthed.

26. Point No.1:- The trial court gave finding that as per Ex.A3 after the death of the Gattu Savitri, her properties devolve upon her husband and next to her husband, the properties devolve upon his son i.e., plaintiff. Therefore, during the life time of father of the plaintiff, the plaintiff shall not have any right over the suit land. The plaintiff has approached the court with a prayer to protect the properties of her mother (which may devolve upon his father and next to his father, devolve upon him) from being encroached by third person. Being the son of Gattu Savitri he has every right to protect properties of her mother from being devoured. To do that he need not wait until his family members come forward. (if plaintiff has any sisters namely Promodini and Praveena as alleged by the defendant) dispute is not between the plaintiff and his family member, dispute is against the third person. If the dispute is between plaintiff and his father on the ground of suit land being alienated by the plaintiff, the contention of the defendant that plaintiff will not have any right to file the suit for father of the plaintiff is alive holds good, but here dispute is not between plaintiff and his father, but between the plaintiff and third person i.e., defendant. It is for the family members of the plaintiff to claim share in the property of Gattu Savitri (if they are entitled). As per Ex.A3 the properties of Savitri shall devolve upon the plaintiff next to his father Ramanna who is no other than GPA holder through whom plaintiff filed the suit which means the Ramanna, the husband of Savitri had knowledge of the suit. Moreover, Pw1 testified in his evidence that he had given away his entire properties to the plaintiff, but the trial court missed that point and gave finding that during the life time of his father plaintiff would not get any

right over the suit land by virtue of Ex.A3 which is based on wrong assumption.

27. Point No.2: One of the issues framed by the trial court is whether the suit becomes bad for non joinder of proper and necessary parties. Since suit is not for partition, it does not become bad for non joinder of necessary parties (even if any interested parties are there). Moreover, it was not pleaded by the defendant in written statement that suit would become bad for non joinder of proper and necessary parties. The trial court is not correct in framing such issue. Issues shall be confined to pleadings.

28. Point No.3: Ex.B4 is the simple sale deed through which the mother of the defendant, Ramadugu Shantamma purchased the suit land from Suvarna Mallaiah on 24.03.1972 for a sale consideration of Rs. 3,000/- subsequently, on 07.04.2005 the defendant got impounded it by RDO by paying necessary stamp duty of Rs. 4,671/- and thus legalised. I have perused Ex.B4 and it was impounded by RDO. But the question that is to be considered is whether Ex.B4 gets legality in its entirety to the extent of stamp duty it gets legality, but not in its entirety. Since, Ex.B4 is unregistered document and it is not something which is sought to be used for collateral purpose and as the defendant depended on the Ex.B4 entirely it can not be received in evidence in terms of Sec. 49 of the registration Act 1908. On the other hand ex.A1 will deed executed in favour of Gattu Savitri, mother of the plaintiff, by Suvarna Mallaiah is registered will deed basing on which Ex.A3 came into being. Moreover, the defendant plead in his written statement that after the death of the father of the plaintiff the properties mentioned in Ex.A3 devolve upon the plaintiff. Even in the absence of Ex.A3 the plaintiff would get properties of her mother being son. Hence, Ex.A3 stands good.

29. Point No.4: Ex.A1 is registered will deed, whereby the mother of the plaintiff acquired suit land. It has been pleaded by the defendant in his written statement that registered will deed (Ex.A1) has no reference of open land. But defendant admitted in his cross examination that it has reference of open land. It has been clearly mentioned in Ex.A2 translated copy of Ex.A1 registered will deed that H.No.10-65 along with open land of 115.51 Sq. Mts has been bequeathed. Therefore, the contention of the defendant that the open land mentioned under Ex.A1 is different from the suit land is by no means worth considering. By Ex.A1 it becomes evident that along with H.No.10-65 suit land also given to mother of the plaintiff. If you say let us see whether Ex.B4 on which the defendant relied, has any reference of suit land i.e., 118.51 Sq. mts it has no such reference in it. Therefore, it can be held without any hesitation that the suit land absolutely belonged to Gattu Savitri and plaintiff being son of the Gattu Savitri and by virtue of Ex.A3 has right to seek to be declared to be the owner of the suit land and entitle for perpetual injunction. Therefore, point No.4 is decided in favour of the plaintiff.

30. Point No.5: In view of the findings given on points No.1 to 4, I hold that the judgment and decree passed by the trial court is liable to be set aside.

31. In the result, the appeal is allowed with costs. The judgment and decree passed by the trial court in OS 60/2006 dated 27.08.2015 is set aside declaring the plaintiff is the owner of the suit land and restraining the defendant, their agents, servants, etc., from interfering with the possession and enjoyment of the plaintiff over the suit land.

Typed to my dictation corrected and pronounced by me in Open court on this the 05th day of January, 2018.

**SENIOR CIVIL JUDGE,
MANTHANI.**

APPENDIX OF EVIDENCE
WITNESSES EXAMINED
-NIL-

**SENIOR CIVIL JUDGE,
MANTHANI.**

DECREE
IN THE COURT OF THE SENIOR CIVIL JUDGE: AT: MANTHANI.

**PRESENT: SRI A. JAYA RAJU,
SENIOR CIVIL JUDGE,
MANTHANI.**

Friday, the 05th day of January, 2018

A.S. NO. 01 OF 2015

BETWEEN:

Gattu Narsimha Prasad, S/o. Sri Ramanna, 39 years, Occ: Software Engineer, R/o. Presently residing in USA petitioner represented by his father and regd. GPA holder Sri. Ramanna, S/o. Gattu Bapu, permanent R/o. 11-41/4, AP&T Colony, Dilsuknagar, Hyderabad, Pin 500060.

...Appellant/Plaintiff.

A N D

Ramadagu Maruthi Rao, S/o. Kishtaiah, 50 years, Occ: Teacher, R/o. H.No.10-12, Mandate street Manthani, Karimnagar.

...Respondent/defendant.

On appeal from the judgment and decree dated 27.08.2015 in OS No.60 of 2006 on the file of Junior Civil Judge, Manthani.

Between:

Gattu Narsimha Prasad

...Plaintiff.

A N D

Ramadagu Maruthi Rao

...Defendant.

-000-

This appeal is coming before me in the presence of Sri K.V.L.N. Hari Babu, Advocate for Appellant and of Sri C. Raman Kumar Reddy, Advocate for the Respondent, having been heard and having stood over consideration to this day, this **COURT DOTH ORDER AND DECREE:**

1. That the Appeal be and is hereby allowed.
2. That there be with costs.

Given under my hand and the seal of this Court, on this the 05th day January, 2018.

**SENIOR CIVIL JUDGE,
MANTHANI.**

:: PARTICULARS OF COSTS ::

FOR THE APPELLANT:
RESPONDENT:

1. Stamp on petition	Rs.840-00
2. Stamp on power	Rs. 2-00

Total:	Rs.842-00

FOR THE

1. Stamp on power	Rs.2-00

Total:	Rs.2-00

**SENIOR CIVIL JUDGE,
MANTHANI**

Note: 1) That the suit is for declaration and perpetual injunction upon which a C.F. of Rs.846/- is paid under section 24 (d) of A.P.C.F. and S.V.Act and in this appeal also a C.F. of Rs.840/- is paid U/Sec.49 of A.P.C.F. and S.V.Act.

2) F.Cs. and Memo of costs are not filed by either side.