**Avula Sathaiah Vs. Avula Lingaiah and Others**

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**SooperKanoon Citation** : sooperkanoon.com/435894

**Court** : Andhra Pradesh

**Decided On :** Mar-30-2001

**Reported in** : 2001(3)ALD546; 2001(3)ALT221

**Judge** : D.S.R. Varma, J.

**Acts** : Registration Act, 1908 - Sections 13 and 17; Transfer of Property Act, 1882 - Sections 53-A

**Appeal No.** : CRP No. 4936 of 2000

**Appellant** : Avula Sathaiah

**Respondent** : Avula Lingaiah and Others

**Advocate for Def.** : Mr. A. Venugopal, Adv.

**Advocate for Pet/Ap.** : Mr. S.T.P. Satyanarayana Chary, Adv.

**Judgement** :
ORDER

1. The dispute in this revision is whether the unregistered sale deed dated 30-10-1993, sought to be marked can be received and admitted in the evidence.

2. Originally the suit was filed for permanent injunction. During the trial, the defendant No.l sought for receipt and admission of an unregistered sale deed dated 30-10-1993 to substantiate the averments made in the written statement.

Upon the same being objected by the plaintiff, the trial Court having considered the arguments advanced by both the parties, disallowed the said unregistered sale' deed dated 30-10-1993 to be received and admitted into evidence, upholding the objection raised by the plaintiff. Aggrieved by the said finding, the present revision is filed by the defendant No.3. The parties herein shall be referred to as plaintiff and defendants as per the ranking assigned to them in the suit.

3. The plaint averments are necessary to be looked into and they are in brief as follows:

The plaintiff purchased the suit land from defendant No.3 Avtila Sataiah through an agreement of sale dated 22-9-1984 and on the same day paid an amount of Rs.9,000/-as sale consideration to D3 Sataiah vendor and possession was delivered to him. Since the date of purchase, the plaintiff has been in actual possession and enjoyment of the suit schedule property. His name as well as his ownership was recorded in the revenue records. It is further averred by the plaintiff that the MRO Ramannapet conducted an enquiry under the ROR Act and issued a certificate under Section 13(b) under the said Act; that he has been paying the land revenue also and thus he has become the absolute owner of the suit schedule land and; that the defendants who are in no way connected with the suit schedule property has interfered with his peaceful possession and enjoyment by trying to encroach upon a portion of the suit schedule land, the present suit is filed.

4. The case of the defendants is of total denial. But the specific averments are that the plaintiff is not the owner of the suit schedule land and he was not been in possession inasmuch as he has no right title or interest whatsoever over the suit land. They also specifically deny the averment that the plaintiff was cultivating the suit land.

5. It was further specifically alleged that plaintiff purchased the suit land originally from defendant No.2 for a consideration of Rs.9,000/- on 22-9-1984 but only an amount of Rs.4,2007- was paid to the defendant No.3 arid a surety was given by the plaintiff to defendant No.3 for payment of Rs.4,800/-; that possession was never delivered to the plaintiff as full consideration was not passed on to the defendant No.3; that the plaintiff could not pay the remaining amount till 30-10-

1993 and as such he approached the village elders for conciliation and during the conciliation, the plaintiff offered to resell the suit land and defendant No.3 purchased the same for a consideration of Rs. 17,000/- and paid the entire consideration to the plaintiff and got executed a sale deed in his favour; the receipt of the sale consideration was acknowledged by the defendant No.3. According to him, the plaintiff applied for ROR in the year 1994, suppressing the facts of execution of the sale agreement dated 30-10-1993 in favour of the defendant No.3. It is further alleged that as the dispute was settled before the elders, and having purchased the land back from the plaintiff for a valuable consideration of Rs.17,000/-, the D3 sold the same suit schedule land to D1 by name Challa Muthamma and executed a regular sale deed on 5-9-1994 and delivered possession. D2 is the husband of D1 and on the date of filing of the suit D1 to D3 were in actual possession of the suit land.

6. In the light of the above contentions, of both the parties, and on the material on record, the point that arises for consideration is whether the document dated 30-10-1993 is to be received and admitted in evidence by the lower Court for a collateral purpose.

7. The trial Court had given as many as seven reasons to reject the plea on behalf of the defendants, which are in brief as follows:

(i) the disputed document dated 30-10-1993 is an unregistered out and out sale deed for transfer of the suit land for a valuable consideration of Rs. 17,0007-and the entire sale consideration was paid according to the said recitals of the document.

(ii) The disputed document was executed on a ten rupees stamp paper and there is no indication to the effect that it is an agreement of sale.

(iii) It appears from entries and various columns in the document that it was a sale.

(iv) The alleged unregistered sale deed was filed into the Court only on 19-9-2000 though the suit is pertaining to the year 1994 and after the written statement was filed on 19-11-1996 itself.

(v) There was no mention of details of title of the vendor of the sale deed in favour of Dl alleged to have been executed by D3 on 5-9-1994.

(vi) D3 who was examined as DW1 stated in his examination-in-chief that he had purchased the suit land for a valuable consideration of Rs.17,000/-on 30-10-1993 and the plaintiff executed a sale deed in his favour. But the regularisation of the agreement of sale deed dated 22-9-1984 in favour of the plaintiff by the revenue authorities and consequent issuance of Section 13-B and Section 13-C certificates under A.P. Records of Rights and Pattadar Pass Books Act, dated 13-10-1994 issued in favour of the plaintiff, the land revenue receipts, certified copy of the pahani, cash receipt issued by D3 in favour of the plaintiff in token of receipt of sale consideration of Rs.9,8007- were not challenged by the defendants before the necessary revenue authorities since 1984 and lastly.

(vii) The defence of the defendants is not based under Section 53-A of the Transfer of Property Act and there is no counter claim or suit filed by the defendants for specific performance under Chapter-II of the Specific Relief Act.

The reasons given by the lower Court have to be scrutinised with reference to the averments made in the plaint and written statement. The specific case of the plaintiff is that he purchased the suit property on 22-9-1984. But it cannot be ignored that he stated in the plaint pleadings that he purchased the suit land through an agreement of sale on 22-9-1984. Therefore, admittedly there was no regular sale deed. According to him he was put in possession by D3 only by virtue of the sale agreement having received the sale consideration of Rs.9,000/-. Therefore, the issue whether the possession and title passed on to the plaintiff by such sale agreement dated 22-9-1984 is still at large. A specific finding has to be given only after conducting the trial. Further it has to be remembered that the suit is filed for a perpetual injunction on the assumption that by virtue of the said sale agreement of the year 1984 not only the possession but also the title had passed on to the plaintiff. The trial Court did not go into this question in the present order. Perhaps a finding would be given in this regard after full trial. Significantly or intentionally the plaintiff did not say anything about the subsequent sale agreement/sale deed alleged to have been executed by him in favour of D3 in the year 30-10-1993. The D3 gives out the reasons and circumstances under which the disputed sale agreement dated 30-10-1993 was executed by the plaintiff in his favour. Further the D3 slated in the written statement that subsequent to his purchase of the suit land from the plaintiff, the same was sold by a regular sale deed in favour of D1 on 5-9-1994 and delivered possession. Interestingly the plaintiff obtained some certificates under the ROR Act in the month of October, 1994 i.e., subsequent to the sale of the suit land by the defendant No.3 in favour of Dl.

8. It is indiscernible as to why the plaintiff kept quite for about a decade to get the necessary entries made in the revenue records, if he really purchased the suit land for a valuable consideration on 22-9-1984 from D3.

9. Therefore, from the above, it is clear that the contentions of plaintiff and defendant are quite distinct and conflicting with each other. To put in a different way, the plaintiff came into possession by virtue of the sale agreement entered into between him and the D3 on 22-9-1984, having purchased from D3 and whereas D3 came into possession by virtue of sale agreement said to have been executed by the plaintiff himself on 30-10-1993 and defendant No.l came into possession through D3 on 5-9-1994. So how and on what date, either of these parties had come into possession is a question to be decided during the trial. To come to any conclusion in this regard, evidence has to be let in by both the sides, because both the plaintiff and the defendants have taken their independent stands, categorically in the plaint and the written statement. It is not as though the defendants had taken this plea for the first time during the trial.

10. As already noted the suit is for perpetual injunction. If the contention of the D3 is to be accepted, D1 ought to have been in possession as on the date of filing ofthe suit and if the contention of the plaintiff is to be accepted, it can be presumed that the plaintiff has been in possession having acquired title.

11. In normal course in a suit for injunction, an occasion may arise for the Court to decide the question of title as an incidental issue.

12. In the instant case, both the plaintiff and the defendants have been basically setting up their respective claims on the basis of two different agreements of sale i.e., through the first document of the year 1984 the plaintiff got title and possession from D3 and through the 2nd document, the D3 got the title and possession back on payment of valuable consideration from the plaintiff on the intervention of the elders and subsequently he sold that land to D1 by virtue of a regular sale deed. Therefore, in my view in such peculiar circumstances, the question' of fact with regard to the title have to be given primacy before deciding the issue of possession, in order to come to a right conclusion with regard to possession.

13. In my considered view all the reasons assigned by the lower Court in rejecting the disputed document dated 30-10-1993 are not very relevant for consideration at this stage itself. The said reasons which are in the nature of findings cannot be given at this stage and they can be given only after the full trial.

14. It is clear from the averments made in the plaint and written statement that these contentions are raised, but significantly the plaintiff speaks of the alleged sale agreement of the year 1984 only and whereas the defendant while admitting the execution of the sale agreement in the year 1984, goes further and explains the reasons under which he had to purchase back the property from the plaintiff again. Both the transactions of the year 1984 and 1993 are agreements of sale only and both are claiming title and possession on the strength of their respective documents. Therefore, if the disputed document dated 30-10-1993, which is being relied on by D3 if totally excluded from being received and admitted in evidence, the only document that remains and falls for consideration would be the document relied upon by the plaintiff i.e., the sale deed dated 22-9-1984. In my view this kind of exclusion of the other documents relied upon by the defendant No.3 would only make the case lopsided more in favour of the plaintiff and, therefore, such an exclusion at this stage, particularly when a specific averment was made by D3 denying the possession and title depending upon the present disputed document, would wholly be unjustifiable.

15. Another significant factor to be noted is, according to the defendants, D3 having purchased back the land from the plaintiff, for a valuable consideration, in turn sold away the same in favour of Dl by way of regular sale deed on 5-9-1994 and possession was delivered. Therefore, it is not the interest of the plaintiff and D3 are alone involved, but also the interest of Dl, who would be a bona fide purchase, if proved in the trial. Hence, as per the averments of the written statements it is D1 alone who has got a title and possession by virtue of a regular sale deed dated 5-9-1994 from D3. Therefore, I am of the view that denying the receipt of the disputed document dated 30-10-1993 may amount to denial of the rights of Dl and eventually D3 may have to file a separate suit for declaration of title and recovery of possession or any other relief, so also with D1. Therefore, in my view, rejection of the disputed document at this stage itself may result in proliferation of litigation and may also amount to prejudging certain crucial issues without considering the relevant material.

16. There is another dimension in this case. The records shows that the plaintiff relies on Ex.A3, certificate issued by the revenue authorities and Ex.A4 dated nil form No.l3(c) issued by the revenue authorities, Ex.A5 certificate of Adangal Pahani, Ex.A6 dated 8-6-1983 land revenuer receipts. In this connection I am of the view that the entries made in the revenue records are not conclusive proof of title and possession. When a suit of the present nature had been instituted, such entries made in the revenue records or the certificates issued by the revenue authorities shall have to be tested by the competent civil Court. As already pointed out, in the light of the averments made in the plaint and written statement, and in view of the peculiar circumstances of the case, the question of title and possession have become inter dependant.

17. For the foregoing reasons, I feel that the Court below is not justified in not receiving and admitting into evidence, the unregistered sale deed dated 30-10-1993 and therefore impugned order is liable to be set aside.

18. In the result the revision is allowed and the Court below is -directed to receive the alleged unregistered sale deed dated 30-10-1993 and admit the same into evidence.

19. It is made clear that the trial Court while disposing of the suit shall not be influenced with the findings or observations made in this order. No costs.