APHC010357142012

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3397]**
(Special Original Jurisdiction)

MONDAY,THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

SECOND APPEAL NO: 522/2012

Between:

Bonkuru Radha Rani **...APPELLANT**

AND

Battula Asha and Others **...RESPONDENT(S)**

Counsel for the Appellant:

1. R RANGANATHAN

Counsel for the Respondent(S):

1. K NAGA PHANINDRA
2. MALLIKARJUNA RAO P
3. M CHALAPATI RAO

The Court made the following:

Reserved on 15.04.2026
Pronounced on 15.06.2026
Uploaded on 15.06.2026

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.522 of 2012

JUDGMENT:

The unsuccessful defendant No.1 in O.S. No.174 of 2004 on the file of the Principal Junior Civil Judge, Mangalagiri, Guntur District, filed a first appeal in A.S. No.16 of 2010 on the file of the Senior Civil Judge, Mangalagiri, Guntur District. The First Appellate Court, on hearing both sides, dismissed the said first appeal vide A.S. No.16 of 2010. Aggrieved by the said decree and judgment, the second appeal is filed by defendant No.1 in O.S. No.174 of 2004.

2. The plaintiffs initiated action in O.S. No.174 of 2004, on the file of the Principal Junior Civil Judge, Mangalagiri, Guntur District, with a prayer for permanent injunction restraining the defendants and their men from interfering with the plaintiffs' peaceful possession and enjoyment of the plaint schedule property and for costs.

3. The appellant herein is defendant No.1, respondent Nos.1 and 2 are plaintiff Nos.1 and 2, respectively, and respondent Nos.3 to 7 are defendant Nos.2 to 6 in O.S. No.174 of 2004. On 03.04.2017, this Court dismissed the appeal for default against respondent No.5 herein. During the pendency of the second appeal, respondent No.7 herein died, and respondent No.8 was brought on record as the legal representative of deceased respondent No.7.

4. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in O.S. No.174 of 2004.

5. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.174 of 2004, is as follows:

I. The plaintiff No.1 is the absolute owner and possessor of the plaint schedule property, having purchased the same under a registered sale deed dated 14.02.2003 from the defendant No.6, who is the absolute owner of the said property. The plaintiffs further pleaded that ever since the date of purchase, the plaintiff No.1 has been in peaceful possession and enjoyment of the plaint schedule property as absolute owner thereof without any objection or interference from anybody and the Government authorities also recognized the title and possession of the plaintiff No.1 and issued pattadar passbook and title deed passbook in her favour. The plaintiffs further pleaded that subsequently, the plaintiff No.1 executed a gift deed dated 22.02.2003, in favour of her paternal grandmother i.e. the plaintiff No.2 conveying an extent of Ac.2.27 cents in D.No.320/A, which forms a part of the plaint schedule property. The plaintiffs further pleaded that the Government authorities also recognized the right, title, and possession of the plaintiff No.2 and accordingly, issued pattadar passbook and title deed passbook in her favour in respect of the said extent.

II. The plaintiffs further pleaded that ever since the execution of the said gift deed, the plaintiff No.2 has been in possession and enjoyment of

the said property. The plaintiffs further pleaded that both the plaintiffs are having right, title, interest, possession and enjoyment over their respective properties, which are consisting as single bit and due to rise of value of the property, all the defendants colluded together and developed a plan and implemented the same by filing a false suit for partition against the plaintiffs and others. The plaintiffs further pleaded that in the said suit vide O.S.No.116 of 2003 the defendant No.1 therein is the plaintiff, defendant Nos.2 to 5 therein are the defendant Nos.2 to 5, and the plaintiffs herein are the defendant Nos.6 and 7. The plaintiffs further pleaded that taking advantage of the pendency of the said partition suit, the defendants have been continuously harassing the plaintiffs and the defendants have no right, title, interest, possession, or enjoyment over the plaint schedule property and are threatening the plaintiffs with dire consequences. The plaintiffs further pleaded that two days prior to filing of the suit, the defendants openly proclaimed in the village that they would forcibly dispossess the plaintiffs from the plaint schedule property and the plaintiffs are unable to resist the illegal and high-handed acts of the defendants and as such, the plaintiff was constrained to file the present suit.

6. The defendant No.1 filed a written statement and the case of the defendant No.1 as per the written statement filed by him is as follows:

I. The defendant No.1 pleaded that the plaintiffs suppressed material facts and the plaint schedule property is jointly possessed and enjoyed by

defendant Nos.1 to 5. The defendant No.1 further pleaded that no injunction can be granted against co-owners, particularly when the plaintiffs themselves claim title through defendant No.6. The defendant No.1 further pleaded that she is the daughter of defendant No.6 and the defendants alleged that the plaintiff No.2 is the concubine of defendant No.6. The defendant No.1 further pleaded that one Battula Ramireddy is the legally wedded husband of the plaintiff No.2 and they were blessed with a son by name Venkata Reddy, and the plaintiff No.1 is the daughter of the said Venkata Reddy. The defendant No.1 further pleaded that the defendant No.6 and the plaintiff No.2 have been maintaining illicit intimacy for more than 25 years and the defendant No.6 is the manager of the Hindu Joint Family consisting of defendant Nos.1 to 5 and that the joint family owned and possessed Ac.18.46 cents of land situated at Nidamarru and Kuragallu Villages.

II. The defendant No.1 further pleaded that the defendant No.6, acting as manager of the Hindu Joint Family, purchased Ac.8.53½ cents of land under various sale deeds in his name after alienating ancestral properties to an extent of Ac.7.10 cents. Therefore, the properties purchased by defendant No.6 are also joint family properties and defendant No.6 has no exclusive right or absolute interest therein. The defendant No.1 further pleaded that the defendant No.6 executed a nominal, collusive, and void sale deed in favour of the plaintiff No.1, who is the granddaughter of the plaintiff No.2, in respect of the plaint

schedule property. The defendant No.1 further pleaded that the plaintiff No.1, being aged about 20 years and a student without any independent source of income, had no financial capacity to purchase the plaint schedule property. The defendant No.1 further pleaded that subsequently the plaintiff No.1 executed a gift deed in favour of the plaintiff No.2, who is her paternal grandmother aged about 70 years, conveying an extent of Ac.2.27 cents in D.No.320/A of Nidamarru Village. The defendant No.1 further pleaded that the said transactions clearly shows that the documents were brought into existence collusively and nominally with an intention to cause wrongful loss to defendant Nos.1 to 5 and the other co-sharers.

III. The defendant No.1 further pleaded that the said sale deed and gift deed are void insofar as the shares of defendant Nos.1 to 5 are concerned. The defendant No.1 further pleaded that she has already instituted O.S.No.116 of 2003 on the file of the Principal Junior Civil Judge, Mangalagiri, Guntur District, seeking partition of all the joint family properties, including the plaint schedule properties, which are shown as item Nos.2 to 4. The defendant No.1 further pleaded that the entries made in the revenue records on the basis of the aforesaid void documents do not confer any valid title upon the plaintiffs and such revenue entries cannot be treated as proof of ownership. The defendant No.1 further pleaded that the defendant No.6 has been residing with the plaintiff No.2 and that the plaintiffs issued legal notices to the defendant

No.6 at Kaza Village, where they were residing together. The defendant No.1 further pleaded that after the birth of defendant Nos.1 to 3 and their sister late Sivamma, defendant No.6 developed aversion towards the mother of defendant Nos.1 to 5 and the plaintiff No.2 deserted her husband and that after neglecting his family, defendant No.6 has been residing with the plaintiffs from January, 2003 onwards. Therefore, she prayed for dismissal of the suit with costs.

7. The defendant No.7 filed a written statement and the case of the defendant No.6 as per the written statement filed by the defendant No.6 is as follows:

I. The defendant No.6 pleaded that he sold the plaint schedule property in favour of the plaintiff No.1 under a registered sale deed dated 14.02.2003 and, on the very same day, delivered possession of the plaint schedule property to her. The defendant No.6 further pleaded that ever since the date of purchase, the plaintiff No.1 has been in possession and enjoyment of the plaint schedule property as its absolute owner. The defendant No.6 further pleaded that certain disputes arose between defendant No.6 and his daughters and as such, the defendant No.1 instituted O.S.No.116 of 2003 against defendant No.6, her sisters, the plaintiffs, and one J.Aruna. The defendant No.6 further pleaded that he has also filed his written statement in the said suit and the present suit has been instituted only as a counterblast to the said partition suit and that he has been unnecessarily impleaded as a party to the proceedings. Therefore, he prayed for dismissal of the suit with costs

8. On the basis of above pleadings, the learned trial Judge framed the following issues for trial:

1) Whether the plaintiff 1 and 2 are in possession and enjoyment of the plaint schedule property?
2) Whether the plaintiffs are entitled for grant of Permanent Injunction as prayed for? and
3) To what relief?

9. During the course of trial in the trial Court, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A-1 to A-13 were marked. On behalf of the defendants, D.Ws.1 to 4 were examined and Exs.B-1 to B-22 were marked.

10. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, decreed the suit. Felt aggrieved thereby, the unsuccessful defendant No.1 filed the appeal suit in A.S.No.16 of 2010, before the Senior Civil Judge, Mangalagiri, Guntur District, wherein the following point came up for consideration:

1) Whether the plaintiffs established their possession and enjoyment over the plaint schedule property to maintain the suit for permanent injunction simpliciter?

11. The learned first appellate Judge after hearing the arguments, answered the points, as above, against the defendant No.1 and dismissed the

appeal by confirming the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful defendant No.1 in O.S.No.174 of 2004 filed the present second appeal before this Court.

12. On hearing both sides' counsel at the time of admission of the second appeal on 09.07.2012, the Composite High Court of Andhra Pradesh at Hyderabad, admitted the second appeal and framed the following substantial question of law:

1) Whether the Courts below are right in granting injunction based on Exs.B8 and B9 whose validity is in dispute?

13. Heard Sri Ranganathan, learned counsel appearing for the appellant/plaintiff, Sri M.Chalapathi Rao, learned counsel appearing for the respondent No.5, Sri Sudhakar Rao Ambati , learned counsel appearing for the respondent Nos.6 and 7 and Sri K.Nagaphanindra, learned counsel appearing for the respondent No.8.

14. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is final Court of facts, except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of ***Bhagwan Sharma v. Bani Ghosh***[1], the Apex Court held as follows:

> "The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature."

In the case of ***Kondira Dagadu Kadam v. Savitribai Sopan Gujar***[2]**,** the Apex Court held as follows:

> *"The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."*

15. The learned counsel for the appellant would contend that the judgment and decree of both the Courts below in decreeing the suit for permanent injunction in O.S. No.174 of 2004 are illegal and contrary to law. As could be seen from the judgment of the trial Court, the trial Court held in its judgment that the suit of the plaintiffs is decreed restraining the defendants and their men from interfering with possession and enjoyment over the plaint schedule property except under due process of law. Aggrieved by the said judgment, defendant No.1 in the suit filed the first appeal vide A.S. No.16 of 2010. The plaintiffs or defendant Nos.2 to 6 in the suit have not filed any cross-objections in A.S. No.16 of 2010, and the First Appellate Court dismissed the first appeal vide A.S. No.16 of 2010 by confirming the decree and judgment passed by the trial Court.

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[1] **AIR 1993 SC 398**
[2] **AIR 1999 SC 471**

16. As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. It is also well settled that "a *finding of title cannot be recorded in a suit for injunction unless there are necessary pleadings and an appropriate issue regarding title. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the Court will not investigate or examine or render a binding finding on a question of title".*

17. It is a settled law that in a suit for permanent injunction to restrain the defendants from interfering with the plaintiffs' possession, the plaintiff will have to establish that, as on the date of the suit, he was in settled possession of the plaint schedule property and the defendant tried to interfere with or disturb possession. The claim of the plaintiffs is that plaintiff No.1 is the granddaughter of plaintiff No.2 and plaintiff No.1 purchased Ac.4.77 cents of land under a registered sale deed dated 14.02.2003 from defendant No.6 by paying sale consideration, and since then plaintiff No.1 is in possession and enjoyment of the same. Subsequently, out of Ac.4.77 cents of land, plaintiff No.1 gifted an extent of Ac.2.27 cents itself, which is a part of the plaint schedule property, to plaintiff No.2 under a registered gift deed dated 02.02.2003, and the Government also issued pattadar passbooks and title deed passbooks. To prove the vendor's title, they filed certified copies of the vendor's sale deeds dated 19.06.1969 and 11.06.1971, and the same are exhibited as Ex.A-3 and Ex.A-4. The certified copies of the plaintiffs' sale

deeds were filed and got marked as Ex.A-1 and Ex.A-2. The certified copies of pattadar passbooks are marked as Ex.A-5 and Ex.A-6. The certified copies of title deed passbooks of plaintiff Nos.1 and 2 are marked as Ex.A-7 and Ex.A-8.

18. The plaintiffs filed a suit for injunction simpliciter vide O.S. No.174 of 2004. The claim of the plaintiffs is that plaintiff No.1 purchased the plaint schedule property under a registered sale deed dated 14.02.2003 from defendant No.6 by paying sale consideration, which is evidenced by Ex.A-1, and plaintiff No.1, out of Ac.4.77 cents of land, gifted an extent of Ac.2.27 cents of land in favour of plaintiff No.2, and the same is evidenced by Ex.A-2. The plaintiffs, to prove the vendor's title, relied on Ex.A-3 and Ex.A-4 sale deeds, and the plaintiffs further contended that their possession is recognized by the revenue authorities, and the same is evidenced by Ex.A-5 to Ex.A-8. Therefore, the plaintiff proved that their possession of the plaint schedule property, by way of registered sale deeds executed by defendant No.6 in favour of plaintiff No.1. The sale deeds of the vendor, namely Ex.A-3 and Ex.A-4, are not denied by defendant No.1. The contention of defendant No.1 is that defendant No.6 has no right to execute a sale deed in respect of the plaint schedule property of Ac.4.77 cents in favour of plaintiff No.1 and it is a coparcenary property and the sale deed in favour of plaintiff No.1 is a nominal one. Therefore, the same has to be proved by defendant No.1 by producing evidence to show that Ex.A-1 sale deed is a nominal one. Defendant No.1 herein, i.e., the plaintiff in O.S. No.116 of 2003, filed the said suit for partition

of the plaint schedule property, and the said suit was dismissed by the trial Court, which was confirmed by the First Appellate Court. To prove the threat of dispossession, the plaintiffs relied on Ex.A-9 to Ex.A-13. Moreover, the trial Court decreed the suit for permanent injunction restraining the defendants from interfering with the possession of the plaintiffs in the plaint schedule property "***except under due process of law***". The physical possession of the plaintiff over the plaint schedule property under the registered sale deeds by the date of filing of the suit is undisputed by the defendants, and their possession is recognised by the revenue authorities by issuing pattadar passbooks and title deeds.

19. On appreciation of the entire evidence on record, the learned trial Judge as well as the learned First Appellate Judge arrived at a concurrent finding that the plaintiffs are entitled to the relief of permanent injunction restraining the defendants from interfering with the possession of the plaintiff over the plaint schedule property "***except under due process of law***". The general rule is that the High Court will not interfere with the concurrent findings of both the Courts below. But it is not an absolute rule; some of the well-recognized exceptions are where:

i. the Courts below have ignored material evidence or have acted on no evidence;
ii. the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or
iii. the Courts have wrongly cast the burden of proof.

The present case does not come within the ambit of the aforesaid exceptions as stated supra. In the light of the material on record and upon earnest consideration thereof, it is manifest that the substantial question of law raised in the course of hearing in the second appeal on behalf of the appellant did not arise or remain for consideration. This Court is satisfied that this second appeal did not involve any substantial question of law for determination.

20. In the result, the second appeal is **dismissed**, confirming the judgment and decree passed by both the Courts below.

Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeal.

V. GOPALA KRISHNA RAO, J.

Date: 15.06.2026
SRT