

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.554 of 1998

Date:05.06.2015

Between:

Tanukula Durgamma (died)

Tanukula Nageswara Rao and others.

...Appellants/defendants.

AND

Chunduri Brahmeswara Rao and others.

...Respondents/plaintiffs.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

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SECOND APPEAL No.554 of 1998

JUDGMENT:

This appeal is preferred against judgment dated 06-04-1998 in A.S.No.62/1992 on the file of Senior Civil Judge, Narsapur whereunder judgment dated 19-11-1992 in O.S.No.208/1987 on the file of Principal District Munsif (presently Principal Junior Civil Judge), Narsapur is confirmed.

2. Brief facts leading to this appeal are as follows:-

Appellants herein are defendants and respondents herein are plaintiffs in the above referred O.S.No.208/1987 and plaintiffs filed the suit for permanent injunction. Parties are hereinafter referred to as plaintiffs and defendants as arrayed in the suit for convenience.

3. According to plaintiffs, plaint schedule property and some other properties originally belonged to Sattineni Venkatramaiah alias Venkatrao, who had two marriages. D1 is his daughter through his first wife, D2 to D4 are the sons of D1; D6 & D7 are sons of D3, D8 is son of D2 and D5 is a close associate. Atchamma was the second wife of Venkataramaiah and after the death of Venkataramaiah, Atchamma succeeded to all his properties including the plaint schedule property as per law and she is in possession and enjoyment of the same. Atchamma brought up her nephew-Subba Rao, who is the father of plaintiffs and Subba Rao looked after Atchamma during her last days; Atchamma out of love and affection, executed registered settlement deed dated 16-08-1982 giving the plaint schedule properties in favour of plaintiffs by keeping life interest with her. Atchamma used to reside along with plaintiffs and the plaintiffs were in possession and enjoyment of the plaint schedule property even prior to settlement in their favour and after the death of

Atchamma, defendants tried to trespass into the plaint schedule property and therefore, plaintiffs are constrained to file the suit for injunction.

4. According to defendants, plaintiffs and their father have nothing to do with Atchamma and she lived with Durgamma till her death. According to defendants, Venkataramaiah settled Acs.03-00 cents in favour of Atchamma and subsequently, both Venkataramaiah and Atchamma sold that property to D2 under possessory agreement dated 06-12-1980 and since then, the defendants have been in possession and enjoyment of the suit property and the allegation of alleged trespass etc are all created for the purpose of suit.

5. To prove their respective contentions, P.Ws.1 to 4 are examined and Exs.A1 to A9 are marked on behalf of plaintiffs and D.Ws.1 to 5 are examined and Ex.B1 is marked on behalf of defendants. On a over all consideration of oral and documentary evidence, trial Court decreed the suit in favour of plaintiffs and aggrieved by the same, defendants preferred appeal to the Senior Civil Judge and the appellate Court, on a reappraisal of entire oral and documentary evidence, confirmed the decree granted by the trial Court. Aggrieved by the same, present second appeal is preferred.

6. The following are the substantial questions of law that are raised in the grounds of appeal:-

“Whether the findings of the Courts below regarding truth, validity of Ex.A1 are not perverse.

Whether the Courts below are right in upholding the alleged execution of Ex.A1 settlement deed by late Smt. Atchamma, 2nd wife of late Sri S. Venkataramayya, settling the property of her late Husband in favour of plaintiffs, when the daughter born to S. Venkataramayya through her first wife was alive?

Whether the findings of the Court below regarding possession of the property merely relying on Exs.A3 to A5 tax receipts dated 28-08-1987, 29-08-1987 and 30-08-1987 are not perverse?

Whether the suit for bear permanent injunction is maintainable when the title of the plaintiffs are seriously disputed by the defendants?"

7. This Court admitted the second appeal and framed the following as the substantial question of law:-

"Whether the lower appellate Court erred in not considering the case of the appellants that they had half share on the basis of the agreement of sale dated 06-12-1980 being executed by Durgamma, the daughter of Venkat Ramaih and Achamma, the second wife in view of the fact that she would be entitled to half share under Hindu Succession Act, 1956 as said Venkat Ramaiah died after 1956 as per the finding and also in view of the fact that the Court below has not given clear finding whether the agreement of sale pleaded by the defendants-appellants dated 06-12-1980 is proved or not since the proof of it would indicate that they are entitled to half share and as such decree could not have been granted for the entire land."

8. Heard both sides.

9. Advocate for appellants submitted that plaintiffs except producing three tax receipts, did not produce any other evidence to prove title and possession, whereas defendants have established through Ex.B1 that possession was delivered to them under agreement of sale in the year 1980 and since then, they are in continuous possession, but the trial Court ignoring the same, decreed the suit and the same is confirmed by the appellate Court without proper appreciation. He further submitted that both the Courts erred in not considering the case of appellants that they have half share in the property and Atchamma got absolute right as per the Hindu

Succession Act, 1956. It is further submitted that in view of the sale agreement dated 06-12-1980, appellants have got absolute rights in the suit property and plaintiffs were never in possession, therefore, the decrees granted by both the Courts have to be set aside. On the other hand, Advocate for plaintiffs supported the judgments of the trial Court and appellate Court and contended that there is no substantial question of law to be decided by this Court.

10. Now the point that would arise for my consideration in this appeal is whether there is any substantial question of law to be considered by this Court if so whether the Courts below have committed any error in appreciating law governing the parties.

11. **Point:-** As already referred above, the suit is filed for simple injunction. In a suit for injunction, two aspects have to be examined mainly. Firstly, whether the plaintiffs, who approached the Court seeking relief of injunction, were in possession and enjoyment of the disputed property as on the date of the suit. Secondly, whether the plaintiffs have any legal right in a disputed property. Entire case of appellants is based on a possessory agreement, which is marked as Ex.B1 and there is no supporting document to accept the version of defendants that possession was delivered to them under Ex.B1-document. Even according to defendants, the agreement of sale is dated 06-12-1980 and no further steps were taken for getting a regular sale deed in pursuance of agreement of sale. Though appellants contended that they have been in possession and enjoyment of the suit property from the date of possessory agreement, no tax receipts are produced to support their version. Even the appellants have not produced any village accounts to support their version that their names are registered in the village accounts as possessors. On the other hand, plaintiffs produced tax receipts, which are marked as Exs.A1 & A9 besides other documents to prove their possession. In a suit for injunction, the trial Court need

not go into title aspect in detail, but it has to examine it incidentally. Here from the evidence on record, both the Courts concurrently held that *prima facie* title is in favour of the plaintiffs and in pursuance of that, they have been in possession and enjoyment of the suit property even prior to the date of the suit. When *prima facie* possession and title are established, such possession has to be protected, when plaintiffs complained threat of dispossession. Both the Courts have thoroughly examined the evidence on record and came to a right conclusion. The substantial question of law raised in the grounds on the basis of which, this Court formulated the point is in respect of which may require to be examined in a title suit. When the defendants have not enforced the sale agreement in their favour, they cannot claim title on the basis of possessory agreement. With regard to half share, it is not a suit for partition and the defendants have not made any counter claim in their written statement either for declaration or for a share in the suit property, therefore, in the absence of any such counter claim, the objection of the defendants is not at all tenable. On a scrutiny of the entire material on record, I am of the considered view that there are absolutely no grounds to interfere with the concurrent findings of the two Courts and that no substantial question of law is involved to be decided by this Court.

12. For these reasons, second appeal is dismissed as devoid of merits and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.
No costs.

JUSTICE S. RAVI KUMAR

Date:05.06.2015

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