

JTHE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.519 of 2014

JUDGMENT:

The unsuccessful defendants 2 to 4 had preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 assailing the decree and judgment dated 21.08.2012 of the learned Senior Civil Judge, Repalle passed in AS.No.20 of 2010 whereby the learned Senior Civil Judge while dismissing the said appeal had confirmed the decree and judgment of the learned Principal Junior Civil Judge, Repalle passed in OS.No.1 of 2006 filed by the sole plaintiff (since died) for a perpetual injunction in respect of Ac.3.16 ½ cents of dry land at Dindi more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned counsel for the appellants/defendants 2 to 4 ('the defendants 2 to 4', for brevity) and the learned counsel for the respondents 1 to 4/plaintiffs 2 to 5, who are brought on record during the pendency of the suit on the death of the deceased sole plaintiff. Be it also noted that the defendants 2 to 4 got themselves impleaded in the suit as per orders in IA.No.777 of 2006 dated 07.08.2006 and the said defendants are only prosecuting this second appeal. I have perused the material record.

3. Be it noted that in the grounds of appeal, the following substantial questions of law are formulated and it is contended that the said substantial questions of law are involved.

1. Whether the issue/point for consideration as settled by the first appellate Court can be sustained since the same issues as before the trial Court or to be the issues?

2. In a suit for permanent injunction the possession weights as against title, whether the trial Court and appellate Court have to see the possession established as on the date of the filing of the suit or not?

3. When admits there is lease for a period of thirty years in favour of one Sonti Venkateswarlu and Ex.A1 gift deed is dated 24.07.2004, exhibit A2-pass book is dated 09.11.2004 and the last adangal exhibit

A7 and A8 relate to 1987, whether the suit filed as on 05.01.2006, can be taken as possession as on date of filing of suit?

[Reproduced verbatim]

However, at the time of hearing at the stage of admission, the learned counsel for the appellants having fairly submitted that the substantial questions that are initially mentioned in the memorandum of grounds of appeal are not involved had contended that the following substantial questions, which are mentioned in the memo dated 20.11.2014 as additional substantial questions, are involved in this appeal.

- 1. When plaintiffs and defendants are governed by Hanafi law of intestate succession the devolution of shares being automatic, all of them become co-owners and thus whether a suit for mere injunction is maintainable against co-owners?**
- 2. Whether a plaintiff can succeed for grant of permanent injunction without proving possession as on the date of filing of the suit?**
- 3. Whether the properties in the Schedule is covered out of two or more survey numbers of large extents, can the plaint schedule shown to be situated within the same boundaries?**
- 4. Where the Donor under examined as PW2, under whom the plaintiff is claiming, admits that she doesn't know the contents of the alleged A1-gift deed, can the document be held to be proved?**
- 5. When PW2 donor under whom plaintiff is claiming possession and title admits to lease of the entire land by herself and the father of defendants 2 to 4 to one Sonti Venkateswarlu and another about 30 years back, can the suit by plaintiff for permanent injunction be maintainable without impleading the said Sonti Venkateswarlu and another to the parties to the suit?**

[Reproduced verbatim]

According to the submissions of the learned counsel, the parties are governed by Hanafi law of intestate succession and that the defendants 2 to 4 and the plaintiffs are co-owners of all the properties of the joint family and that, therefore, no perpetual injunction can be granted in favour of one co-owner against the other co-owners and that the plaintiffs had failed to establish their lawful and exclusive possession as on the date of the suit, which is a material feature in a suit for perpetual injunction and that, therefore, the said additional substantial questions are involved in this second appeal.

4. On the other hand, the learned counsel for the plaintiffs would contend that no such questions are involved and that both the Courts below had recorded concurrent findings of fact and that the said findings are supported by valid and cogent reasons and that no questions much less substantial questions of law are involved in the second appeal and that the second appeal is devoid of merit and is liable for dismissal at the stage of admission.

5. Now to determine as to whether or not any substantial questions of law are involved and whether this second appeal deserves admission, it is necessary to first refer to the cases of the parties.

5.1 The case of the plaintiffs, in brief, is this:

The mother of the 1st plaintiff by name Abbas Begum was the absolute owner of the plaint schedule property. She had enjoyed the same till she had gifted the same to the 1st plaintiff by virtue of a registered gift deed dated 24.07.2004 under the original of exhibit A1. Since the said date, the 1st plaintiff was and is in possession and enjoyment of the plaint schedule property. He had also obtained a pattadar pass book-exhibit A2 and the title deed book-exhibit A3 from the revenue authorities and is paying cist to the Government as is evident from exhibit A4-the cist receipt. The revenue records exhibited also support his case. The 1st plaintiff had also obtained crop loan from S.B.I. Nizampatnam by depositing the said registered gift deed in respect of the suit schedule land and by creating an equitable mortgage. Subsequently some disputes had arisen between the 1st plaintiff and his cousins. The 1st defendant is a close friend of the cousins of the 1st plaintiff. The 1st defendant had made hectic efforts to trespass into the plaint schedule property and interfere with the peaceful possession of the 1st plaintiff over the suit schedule land. Since the 1st defendant is a powerful person in the locality and as he had started openly proclaiming that he would dispossess the 1st plaintiff from the plaint schedule property, the 1st plaintiff is constrained to file the suit for perpetual injunction.

5.2 Per contra, the defence of the defendants as stated in the written

statements of the 1st and 2nd defendants is in the nature of denial and it is *inter alia* urged in the defence as follows:

The plaint schedule properties and some other properties belonged to the defendants 2 to 4. On their behalf, the 1st defendant is looking after the schedule properties and also the other properties of the defendants 2 to 4. Originally the schedule property and some other property belonged to one Nabi Khan, who is the grandfather of the 1st plaintiff and the defendants 2 to 4. The said Nabi Khan had two sons by name Meer Nissar Hussain Khan @ Bhajan Saheb, who is the father of the 1st plaintiff, and Mohiddin Khan @ Dada Saheb, who is the father of the defendants 2 to 4. After the death of their father, the two brothers used to raise Casurina tope in the entire land besides other trees; and, they were sharing the produce equally. After the death of Meer Nissar Hussain Khan in the year 1957, his four sons used to raise Casurina tope and other trees as usual. Mohiddin Khan was also raising crops along with them; and they are sharing the produce as in the past. Later there was an arrangement between the said parties regarding their properties and the Western half portion came to the share of the defendants 2 to 4 and the remaining half portion on the Eastern side had fallen to the share of the 1st plaintiff and his brothers; and, as per their convenience they are enjoying their respective shares. Neither the mother of the 1st plaintiff nor the 1st plaintiff has got any exclusive right in the schedule land. The suit is filed by suppression and misrepresentation of facts. The suit for perpetual injunction is not maintainable. The 1st plaintiff is not in exclusive possession of the property.

5.3 Based on the above pleadings, the trial Court had framed the following issues.

1. **Whether the plaintiffs are entitled for the permanent injunction as prayed for?**
2. **To what relief?**

5.4 At trial, the 1st plaintiff, his brother and supporting witnesses were examined as PWs 1 to 6 and exhibits A1 to A8 were marked. The 1st defendant and his supporting witnesses were examined as DWs1 to 7 and exhibits B1 to B13 were marked on the side of the defendants.

5.5 After full fledged trial and on merits, the trial court had decreed the suit of the plaintiffs. As already noted, the 1st appeal preferred by the defendants 2 to 4 was dismissed confirming the decree and judgment of the trial Court. Therefore, the said defendants are before this Court.

6. I have given earnest consideration to the facts pleaded and the evidence adduced. I have noted the submissions. PW1 deposed in line with the pleaded case and exhibited the documents that are already referred to supra apart from other documents in exhibit 'A' series. He had also examined his brother, PW3, to corroborate his version that the property originally belonged to their father and that their father had gifted the property to their mother and that their mother had executed gift deeds in favour of the 1st plaintiff and his other brothers and that the plaint schedule property fell to the share of PW1, by virtue of the registered gift deed under the original of exhibit A1, and that he is in possession and enjoyment of the same. A third party was also examined to show that the plaint schedule lands were in enjoyment of the mother of the plaintiffs. He had stated that he knows the said fact since his age of discretion and that since two years the 1st plaintiff is enjoying the suit property and is cultivating it by raising groundnut crops. PW6/2nd plaintiff is the son of the 1st plaintiff. He had also deposed in line with the case pleaded in the plaint. DW1 had deposed in line with the defence pleaded in the written statement. Similarly, DW2 had deposed in line with the contents of his statement and had exhibited the passbook issued in favour of his father as exhibit B2, and also B3 to B7 and B11-cist receipts, B8 and B9-notices exchanged and B10-a notice issued by the MRO. A third party by name Venkateswarlu was also examined as DW3 to show that he was a lessee of the suit schedule property and had exhibited B12-letter of lease executed by Abbas Begum and Mohiddin Khan in his favour. In the

oral evidence both the parties had asserted their respective cases as regards possession over the suit schedule property while denying the possession of the other party. Therefore, the documentary evidence assumes significance. Exhibit A1 is the certified copy of the gift deed in favour of the 1st plaintiff in respect of the plaint schedule property. Exhibits A2 and A3 are the pattadar pass book and title deed book in the name of the 1st plaintiff in respect of Ac.2.19 ½ cents. Exhibit A4 is the cist receipt in respect of the plaint schedule property. Exhibit A5 is the title deed of Abbas Begum and exhibit A6 is also the pattadar pass book in the name of Abbas Begum. The same on a perusal would show that PW2 is having right and possession over Ac.21.22 cents of dry land; Further, exhibit A7, the certified copy of the adangal issued by the MRO of the year 1987, would reveal that the father of the 1st plaintiff was in possession of the said extent. Though the defendants had questioned the right of the mother of the 1st plaintiff to give the property under the original of exhibit A1, they did not challenge the gift deed till date though one of their contentions is that it is a joint family property. No suit for partition or any other suit asserting their right is also instituted till date. The aforementioned documents *ex facie* establish the lawful possession of the 1st plaintiff over the suit schedule property and sufficiently discharge the initial onus of proof which is on the plaintiffs. Coming to the documents on the side of the defendants, exhibit B1 is Anjuman receipt and exhibit B2 is a pass book in favour of the father of the 2nd defendant. These documents do not disclose that the plaint schedule property is kept joint among all the parties to the suit, who are related. Exhibits B8 and B9 are only correspondence exchanged. Though exhibits B3 to B7 are cist receipts which stand in the name of Mohiddin Khan, the father of the defendants 2 to 4 and they pertain to the years 1980, 1981, 1983, 1987 and 2006, there is no mention in the cist receipts about any detail to show that they pertain to the suit schedule land. Further, though a question viz., ***'When plaintiffs and defendants are governed by Hanafi law of intestate succession the devolution of shares being automatic, all of them become co-owners and thus whether a suit for mere injunction is maintainable against co-owners?'*** was being

sought to be raised as a substantial question by stating that the property is a joint family property and that a co-owner is not entitled to an injunction against the other co-owner, in the written statement, a family arrangement and separate enjoyment of the shares as per the convenience is pleaded and it is neither specifically averred nor established that the plaint schedule property is in joint possession. Coming to the next question sought to be raised as a substantial question that the plaintiffs had failed to establish exclusive possession over the plaint schedule property as on the date of the suit, it is to be noted that at one breath the defendants contend that the property is in joint possession and at another contend that the sharers are enjoying the two shares separately as per convenience. Therefore, they are admitting in a way that the plaintiffs are in possession of the property along with them. In addition to this, the 3rd appellant herein, who is 4th defendant, had deposed in his cross examination that his father had got Ac.6.96 cents of dry land towards his share and that except the said property no other properties fell to the share of his father and that the said property was already divided among his brothers. DW2 had also deposed that they did not raise any crop in the suit schedule property in the year 2006 and had further admitted that the 1st plaintiff had raised groundnut crop in the suit schedule property and there was a groundnut crop in the suit schedule property in the year 2009. Therefore, the theory of joint possession is not substantiated by the evidence on the side of the defendants. On the other hand, their evidence goes to show that they have nothing to do with the plaint schedule property and that the 1st plaintiff is in exclusive possession of the suit schedule property. Therefore, the evidence on the side of the defendants is not sufficient to dislodge the case of the plaintiffs, which sufficiently established the possession of the plaintiffs over the suit schedule property as on the date of the suit and at all relevant times. Thus, the facts and the evidence brought on record by all means are sufficient to hold in favour of the plaintiffs that they are entitled to a perpetual injunction as prayed for.

7. Having thus analytically examined the facts and the evidence brought on record, this Court is satisfied that the findings of facts recorded by the

courts below were based on proper appreciation of evidence and the material on record and there was neither illegality nor irregularity in those findings and that, therefore, the findings do not require to be upset.

8. Viewed thus, this Court finds that none of the questions raised are substantial questions and that there is no substance in the questions raised and that therefore, the second appeal is devoid of merit and is liable for dismissal at the stage of admission. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. In the case on hand, after careful examination of the pleadings, the evidence and the contentions, this court found that no substantial question of law is involved and hence, this second appeal is liable for dismissal at the stage of admission in view of the narrow compass of Section 100 of the Code of Civil Procedure.

9. Accordingly, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs.

Miscellaneous petitions, pending if any, in this second appeal shall stand closed.

M. SEETHARAMA MURTI, J

17th July,, 2015
Vjl