

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.1381 of 2010

JUDGMENT:

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The unsuccessful defendant had filed this appeal under Section 100 of the Code of Civil Procedure, 1908 assailing the decree and judgment dated 24.06.2005 of the learned IV Additional Senior Civil Judge (Judge, Fast Track Court), Vijayawada in AS.No.157 of 1999 whereby the learned Additional District Judge had dismissed the said appeal and had confirmed the decree and judgment dated 23.11.1999 of the learned II Additional Junior civil Judge, Vijayawada in OS.No.119 of 1996.

2. I have heard the submissions of the learned counsel for the appellant/defendant ('the defendant', for brevity) at the stage of admission. I have perused the material record.

3. The facts, which lead to the filing of this second appeal, in brief, are as follows:

3.1 The plaintiff had brought the aforesaid suit for perpetual injunction against the defendant in respect of an extent of 242 Square yards (Ac.0.05 cents) in R.S.No.16/3B, Plot No.18, New Assessment No.317, D.No.5-82 with a RCC building and small hut situate in Mulapadu Village of Ibrahimpatnam Mandal of Krishna District, more fully described in the schedule annexed to the plaint.

3.2 The defendant had resisted the suit stating that the plaintiff is not in possession and that the defendant is in possession of the property.

3.3 Based on the pleadings, the following issues were framed by the trial court.

- 1. Whether the plaintiff is in possession and enjoyment of the plaint schedule property by the date of the suit?**
- 2. Whether the defendant is trying to interfere with the**

possession of the plaintiff?

3. Whether the plaintiff is entitled to the relief of permanent injunction?

4. To what relief?

3.4 At trial, the plaintiff and her supporting witnesses were examined as PWs1 to 7 and exhibits A1 to A22 were marked. The defendant and his supporting witnesses were examined as DWs1 to 5 and exhibits B1 to B9 were marked. Exhibits C1 to C5 were also marked.

3.5 After full fledged trial and on merits, the trial Court had decreed the suit of the plaintiff by not taking into consideration the report of the Advocate Commissioner. The first appeal preferred by the aggrieved defendant was dismissed confirming the decree and judgment of the trial Court. Therefore, the aggrieved defendant is before this Court.

4. The learned counsel for the defendant would contend as follows: 'The decrees and judgments of the courts below suffer from illegalities and infirmities. The Courts below had grossly erred in not taking into consideration the report of the Advocate Commissioner. On physical verification of the properties, the Advocate Commissioner had noted that the defendant is in possession of the property. In a suit for perpetual injunction the possession as on the date of the suit is relevant. Despite Commissioner's report with the observations in support of the defendant's case, the Courts below had erroneously discarded the said material evidence. Therefore, the decrees and judgments of the Courts below are liable to be set aside.'

5. I have carefully gone through the judgments of the Courts below. The Courts below had given due weight and consideration to the oral evidence brought on record, which is well corroborated by the documentary evidence in the form of exhibits A1 to A22, which included the exhibits A1 to A10 and A14-tax receipts disclosing the physical possession of the plaintiff over the subject property besides the voters' lists under exhibits A17 to 19, the voter identity card and the pass book under exhibits A15 and A16 respectively, which also reveal that the plaintiff is a resident of the small house situate in

the suit schedule property. Though some documents were exhibited in 'B' series, the same are of no avail to either advance the case of the defendant or dislodge the case of the plaintiff as the same are deeds of adoption, Will, death extract, copies of notices and photographs with negatives. No tax receipts are filed by the defendant. The defendant at one breath contended that he was dispossessed and had filed IA.No.146 of 1996 in March, 1996 seeking restoration of possession. However, he did not examine any supporting witnesses like elders to prove this aspect of defence and to show that he has come into possession of the schedule property and on the other hand, he did not state in his deposition that he was dispossessed by the plaintiff as averred in the above interlocutory application and had stated in his testimony that he was in possession and enjoyment from the death of Gopaiah till the date of his testimony. Therefore, the Courts below had held that he has raised a false plea in regard to possession. Exhibits A17 and A19-voters' lists and exhibit A15-voter identity card clearly disclose that the plaintiff is the wife of the said Gopaiah and she had resided in the house bearing no.5-82 in the plaint schedule property. Further, as per exhibits A12 and A13 the property was mutated in her name. The law is well settled that a Commissioner cannot be appointed in a suit for perpetual injunction to find out as to who is in possession of the property and the Court is not supposed to delegate to a Commissioner its function of determining as to who is in khas possession of the property in a suit for perpetual injunction. Therefore, after giving valid reasons, both the Courts have rightly discarded the Commissioner's report and relied upon the other evidence, which is legally acceptable and is credit worthy. The only question sought to be raised as substantial question in this appeal is as to whether the Courts below are right in discarding the Commissioner's report. When the well reasoned findings of the Courts below are probable and possible, this Court is not empowered to disturb the same by substituting its view though another view is possible in the matter. Since the Courts below had recorded concurrent findings of fact on the said question, this Court is of the considered view that no substantial question of law is involved to admit the appeal. Viewed thus, this Court finds that the question raised is not a substantial question and that there is no

substance in the contentions 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.

6. In the result, the Second Appeal is dismissed at the stage of admission. No costs.

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

M. SEETHARAMA MURTI, J

15th July,, 2015
Vjl