THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL NO.735 OF 2015

JUDGMENT:

This second appeal under section 100 of the Code of Civil Procedure, 1908 ('the Code', for short) by the unsuccessful plaintiffs is directed against the judgment and decree dated 27.07.2015 of the learned VII Additional District Judge, Khammam passed in A.S.No.75 of 2009. The learned Additional District Judge having dismissed the said first appeal had confirmed the judgment and decree dated 05.05.2009 of the learned II Additional Junior Civil Judge, Khammam passed in O.S.No.128 of 1999 filed for specific performance of contract of sale in respect of dry land in an extent of Ac.3.20 guntas in Sy.No.489/AA situated at Rajeshwarapuram Revenue village, more fully described in the schedule annexed to the plaint.

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

3. The learned counsel for the plaintiffs would contend that the courts below had failed to properly appreciate the documentary evidence, i.e., exhibits A27 to A32 and had erroneously rejected the evidence of PW7, who is an official witness, and that the courts below had failed to appreciate that the plaintiffs had proved the sale agreement dated 10.03.1993 by examining PWs 3, 4 and 5 including attesting witnesses, who are independent witnesses, and that the appreciation of evidence by the courts below is erroneous and mechanical and that the courts below had failed to decree the suit for specific performance even though there is no positive rebuttal evidence to dislodge the case of the plaintiffs and that the courts below ought to have seen that both the vendor and vendee under the agreement of sale had died as on the date the trial had commenced and that the evidence brought on record sufficiently established the truth, validity and binding nature of the agreement besides passing of consideration and readiness and willingness on the part of the deceased 1st plaintiff to obtain a sale deed by incurring necessary expenditure towards stamp duty and registration charges, but, the courts below had failed to appreciate the said relevant and material evidence. He would further contend that non-consideration of the material evidence and improper appreciation of the oral and documentary evidence by the courts below raises a substantial question of law to be determined in this second appeal.

4. I have bestowed my attention to the submissions of the learned counsel for the plaintiffs. I have carefully perused the material papers.

5. The case of the plaintiffs is that the 1st plaintiff had purchased Ac.3.20 guntas of land in Sy.No.489/AA from the 1st defendant for a consideration of Rs.90,000/- on 10.03.1993 for *Bilmukta* and that after receiving the entire consideration, the 1st defendant had executed the exhibit A1-agreement of sale dated 10.03.1993 and that since the date of the said agreement of sale, the 1st plaintiff was and is in possession and enjoyment of the same and that in the meanwhile, the 1st defendant and his daughter had filed a suit in O.S.No.54 of 1997 on the file of the Court of the learned I Additional Junior Civil Judge, Khammam for perpetual injunction against the 1st plaintiff and that the 1st defendant did not register the sale deed in spite of repeated oral demands made by the 1st plaintiff and that the said suit was got filed by the 1st defendant in order to avoid specific performance of the suit agreement of sale and that therefore, the 1st plaintiff had issued a notice to the 1st defendant on 18.12.1998, but the same was returned and that the 1st plaintiff was always ready and willing to perform his part of contract and obtain a regular registered sale deed in respect of the agreement schedule property by meeting the necessary expenses and that after the death of the 1st defendant, the defendants 2 to 4, who are his legal heirs, are liable to perform their part of the contract and execute a regular sale deed in favour of the plaintiffs.

6. On the other hand, the defendants 1 to 4, while denying in their defence the suit agreement of sale and passing of consideration, had contended as follows:

The suit in O.S. no. 54 of 1997 which was aforementioned was decreed in favour of the defendants. The 1st defendant, who was the owner of the property, got the same from his father. The marriage of the 4th defendant with the 3rd plaintiff was performed on 25.04.1993 at Tirumalagiri Hillock. At the time of the marriage, the 1st defendant had given an extent of Ac.2.38 guntas towards 'Pasupu Kunkuma' to the 4th defendant. The same was being cultivated by the 3rd plaintiff on behalf of the 4th defendant. In the year 1994, the 3rd plaintiff had ill-treated the 4th defendant and had deserted her and necked her out of the house demanding dowry and also claiming the suit schedule property, which was given to the 4th defendant as 'Pasupu Kunkuma'. The 1st defendant having verified at the Mandal Revenue Office had noticed that the name of the 1st plaintiff was mentioned in Column 13 of the pahani for the year 1994. The defendants had hence, filed an application before the Joint Collector, Khammam for rectification of entry in the revenue record. The plaintiffs are claiming with *mala fide* intention that the 1st defendant sold away the property in favour of the 1st plaintiff in the year 1993 and that subsequently there were complaints to the Police and Mandal Revenue Officer. On the instructions of the Mandal Revenue officer, the Revenue Inspector had taken possession of the suit property on 08.01.1996 and that on 24.01.1996 and 30.01.1996, the Revenue Inspector cut down sugarcane and shifted the same to Rajeswarapuram Sugar Factory. The 1st plaintiff and his sons had attempted to set fire to the sugarcane crop in an extent of Ac.0.20 guntas. On a revision preferred before this Court, the proceedings of the Mandal Revenue Officer were stayed on 01.02.1996 and that the plaintiffs without any manner of right tried to interfere over the suit schedule property and had tried to cause damage to the standing crop and therefore, in the said circumstances, the suit in O.S.No.54 of 1997 was filed. The suit was decreed in favour of the defendants.

The defendants are in possession of the suit property and that the signatures on the suit agreement are not that of the 1st defendant.

7. After framing necessary issues and after full fledged trial, the trial Court had dismissed the suit of the plaintiffs answering all the issues in favour of the defendants and as against the plaintiff. The first appeal preferred by the plaintiffs, as already noted, was dismissed by the court below.

8. A careful perusal of the judgments of the courts below would show that the courts below have considered the facts accurately and appreciated the evidence in proper perspective before answering the issues and points for determination in the *lis*. The court below came to the conclusion that exhibit A1 is not a genuine document, for the following reasons.

1. Though it is mentioned in Ex.A1 about payment of total consideration, there is no reason assigned by plaintiff no.1 why he could not obtain sale deed having paid entire sale consideration. Normally, if sale consideration is paid, there is no reason to obtain agreement of sale instead of sale deed.

2. P.Ws. 1 to 5 in their chief examination stated that the total consideration of Rs.90,000/- was paid on the date of Ex.A1, whereas PWs 2 to 5 in their evidence stated that Rs.70,000/- was paid on the date of Ex.A1 and Rs.20,000/- was paid prior to that date. If really, Rs.70,000/- was paid on the date of Ex.A1 and Rs.20,000/- was paid prior to Ex.A1, to that effect a mention would have been made in Ex.A1 agreement of sale. There is no reason assigned about the earlier payment of Rs.20,000/- was not made in Ex.A.1. There is no reason stated as to why Rs.90,000/- was paid is mentioned, though Rs.70,000/- only was paid on the date of Ex.A1, agreement of sale.

3. There were family disputes between PW2 and DW1. PW2 obtained divorce from DW1. There were exchange of notices between PW2 and DW1. So, the families of both parties are on loggerheads. More so, prior to the present suit, defendant nos.1 and 4 filed O.S.No.54 of 1997 in respect of the suit property for permanent injunction and the

> same was decreed in favour of defendant nos.1 and 4. The appeal preferred by the plaintiffs in A.S.no.32 of 1999 was dismissed. More so, the claim of plaintiffs that they are in possession of the suit property is not correct in view of the decree in O.S.No.54 of 1997.

(Reproduced verbatim)

It is apt to also note that PW2 in his cross-examination had further stated that the Joint Collector deleted his father’s name in the revenue record and the revenue record was rectified in the year 1993-94.

9. Thus, the courts below have recorded concurrent findings of fact supported by positive and sustainable reasons. Viewed thus, this Court finds that there is neither non consideration of material evidence nor mis-appreciation of evidence and that on the other hand; the courts below have rightly examined in juxtaposition the material facts and the evidence brought on record before arriving at the findings supported by valid and cogent reasons. This Court, therefore, holds that the questions being sought to be raised as substantial questions are not pure questions of law and are only mixed questions of fact and law and that no substantial questions of law are involved in this second appeal. The law is well settled that in view of the narrow compass of Section 100 of the Code of Civil Procedure, 1908, a second appeal cannot be admitted unless a substantial question of law is involved. Having regard to the reasons and as no substantial question of law is involved, this Court finds that the second appeal is devoid of merit and that therefore, no grounds are made out for the admission of this second appeal.

10. In the result, the Second Appeal is dismissed at the admission stage. No order as to costs.

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

M.SEETHARAMA MURTI, J

DATED: 06-11-2015.

Hsd