

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1215 of 1999

JUDGMENT:

This second appeal is preferred challenging the judgment and decree dated 11.10.1999 in A.S.No.4 of 1999 on the file of

III Additional District Judge, Tirupathi, whereunder the judgment and decree dated 10.08.1990 in O.S.No.307 of 1982 on the file of District Munsif, Piler, is confirmed.

2. Appellants herein are legal heirs of plaintiff, who is unsuccessful in both the trial Court and appellate Court. Plaintiff filed O.S.No.307 of 1982 initially for the relief of permanent injunction and subsequently amended the prayer for declaration of his possessory right, title and permanent injunction against defendant Nos.1 to 3 and for mandatory injunction against defendant No.4 for removal of foundations laid in the plaint schedule property. Defendants disputed the claim of plaintiff over the plaint schedule property and the trial Court framed initially two issues and thereafter seven additional issues and on a consideration of oral evidence of PWs.1 to 5 and documentary evidence of Exs.A.1 to A.34 on plaintiff's side and oral evidence of DWs.1 and 2 and documentary evidence of Ex.B.1 on defendants' side, disbelieved the claim of plaintiff and dismissed the suit. Aggrieved by which, plaintiff preferred appeal to the District Court and III Additional District Judge, Tirupathi, on a reappraisal of oral

and documentary evidence, dismissed the appeal by confirming the findings of the trial Court.

3. This second appeal is admitted on 06.07.2000 framing the following as substantial question of law:

Whether the Courts below acted legally in refusing to grant relief of mandatory injunction as against R4 (Dr) on the ground that the plaintiff is not the true owner of the suit schedule property.

4. Heard both sides.

5. Advocate for appellant contended that though there is convincing evidence to show that plaintiff is in possession and enjoyment of the plaint schedule property, both the trial Court and appellate Court dismissed the claim of plaintiff on the ground that plaintiff failed to prove his title to the plaint schedule property. He submitted that both the Courts failed to notice that defendant No.4 highhandedly constructed foundations in the plaint schedule property. He submitted that refusal of mandatory injunction against defendant No.4 is incorrect and not justified.

6. On the other hand, advocate for respondents submitted that both the trial Court and appellate Court have rightly appreciated the evidence on record and no substantial question of law is involved and second appeal is liable to be dismissed.

7. Now the point that arises for consideration in this second appeal is:

Whether there is any substantial question of law involved to be determined by this Court?

8. The trial Court while discussing issue No.2, which is concerned with the prayer of mandatory injunction, held as per evidence, defendant No.4 is also in occupation of some portion of the property in Sy.No.251 and he constructed a house and laid foundation stone only in the site adjacent to his house. It is also clear from the evidence that both plaintiff and defendant No.4 and some others were in occupation of Government Poramboke land in Sy.No.251 by constructing houses and in fact Government is the true owner of the entire extent in Sy.No.251. On this ground, trial Court observed that when the plaintiff himself is not owner, he cannot seek the relief of mandatory injunction against defendant No.4 contending that defendant No.4 encroached in to their house property. This finding is upheld by appellate Court. As seen from the material, plaintiff appears to have occupied the plaint schedule property and obtained permission from Gram Panchayat in 1963 for construction of a house. Though plaintiff contended that he perfected his title by adverse possession, there is nothing on record to show that he was continuously in possession of the plaint schedule property over a period of thirty years adversely to the interest of defendant Nos.1 to 3. Even the tax receipts produced by plaintiff are only from the year 1984-1985 and there were no earlier documents to support the version of plaintiff. The Executive Officer of Gram Panchayat, who is examined as PW.5 on behalf of

plaintiffs, clearly deposed that he cannot say whether the permission granted under Ex.A.1 is correct or not. PW.1, who is the G.P.A. holder of plaintiff, deposed in his cross-examination that property tax receipts produced before the Court do not contain any survey number or patta number and that there are some corrections in B-Memo. It is also deposed that he does not know for what extent B-Memos were given. It is not in dispute that B-Memos will be issued only to the encroachers, but not to the real owners. Considering such oral and documentary evidence, both the trial Court and appellate Court have concurrently held that plaintiff has miserably failed to prove his possessory title over the plaint schedule property and having failed he is not entitled for any relief of declaration of possessory title and permanent injunction against defendant Nos.1 to 3 and mandatory injunction against defendant No.4. I do not find any wrong appreciation of evidence either by the trial Court or by the appellate Court and when plaintiff failed to prove his possessory title, for which he sought for a declaration, is not entitled for consequential relief of permanent injunction and mandatory injunction and both the Courts have rightly refused the reliefs and as such, there are no grounds to interfere. No substantial question of law is involved and the grounds urged are in respect of factual aspects.

9. Having regard to the above, this second appeal is dismissed.

10. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

26th November 2015.

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