

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.1095 of 2012

JUDGMENT:

-

This second appeal under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful plaintiff is directed against the decree and judgment dated 04.07.2012 of the learned Senior Civil Judge, Bapatla of Guntur District whereby, the learned Senior Civil Judge while allowing the said first appeal had set aside the decree and judgment dated 09.04.2009 of the learned Principal Junior Civil Judge, Bapatla passed in O.S.No.223 of 2004 and had dismissed the said suit of the plaintiff filed for perpetual injunction.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff ('the plaintiff', for brevity) and the learned counsel for the 1st respondent/1st defendant ('the 1st defendant', for brevity). The 2nd defendant had died during the pendency of the suit leaving behind him the 1st defendant as his legal representative. I have perused the material record.

3. The learned counsel for the plaintiff had stated that the following substantial questions of law are involved in this appeal:

(a) Whether the lower appellate court is justified in reversing the findings of the trial court without considering the fact that admittedly the appellant/plaintiff is in uninterrupted and peaceful possession of the suit schedule property on the date of filing of the suit as well during the pendency of the proceedings before the Trial Court as well as the lower Appellate Court?

(b) Whether the Lower Appellate Court is justified in holding that the appellant/plaintiff is a joint and co-owner along with the respondent/defendant and as such no injunction can be granted?

(c) Whether the Lower Appellate Court is justified in arriving at the

findings in the absence of pleadings as well as evidence to the effect that the appellant and the respondent are joint and co-owner of the suit schedule property?

(d) Whether it is just and proper of the lower Appellate Court to interfere with the judgment of the Trial Court in a case of injunction simplicitor where the appellant/plaintiff has placed sufficient oral and documentary evidence to prove her un-interrupted and peaceful possession of the suit schedule property which is also adduced by the respondent/defendant?"

(Reproduced verbatim)

4. On the other hand, the learned counsel for the 1st respondent/1st defendant had argued that no such substantial questions of law are involved in this appeal; and, as no such questions or any other questions are involved, this second appeal is liable to be dismissed at the admission stage.

5. Now, this court has to examine as to whether or not any substantial questions of law are involved in this second appeal and whether the appeal deserves admission for disposal on merits or is liable to be dismissed at the stage of the admission.

6. Before proceeding further in the matter, it is necessary to refer to the pleadings of the parties and the facts leading to the filing of this second appeal.

6.1 The case of the plaintiff, in brief, is as follows: 'The plaintiff had brought the suit against the defendants who are her daughter-in-law and the grandson for a perpetual injunction in respect of three items of property, viz., Ac.0.94 cents in Sy.No.549/2 and Ac.0.87 cents in Sy.No.550/1 totalling to Ac.1.81 cents (item no.1); Ac.0.20 cents in Sy.No.112/5 (item no.2); and, Ac.0.20 cents in Sy.No.111/2B (item no.3) of Poondla village of Bapatla Sub District of Guntur District, more fully described in the schedule annexed to the plaint. During the life time of the husband of the plaintiff by name, Veeravalli Venkateswarlu, there was a family arrangement

between the husband of the plaintiff and their son Subba Rao, who is the husband of the 1st defendant and the father of the 2nd defendant. As per the said family arrangement, a land in an extent of Ac.2.21 cents was allotted to the plaintiff's husband with an understanding that the same is to be enjoyed by the plaintiff towards her maintenance in case of her husband pre-deceasing her. On the demise of the plaintiff's husband in or about 1998, there was a family arrangement between the plaintiff and her said son to the effect that the plaint schedule property in a total extent of Ac.2.21 cents is to be enjoyed by the plaintiff and that she shall not claim any share in the property of her son. Even after the demise of her son, the arrangement had continued and accordingly the plaintiff is continuing in peaceful possession and enjoyment of the plaint schedule lands and was and is paying taxes to the revenue department. She had filed receipts for the Fasalis 1399 to 1411. She is thus in continuous possession of the plaint schedule lands in her own right. The Government had also issued pattadar pass book and title deed book in her name. She had mortgaged the schedule property with Andhra Bank, Appikatla and had obtained a loan. While so, the defendants with the support of anti social elements are trying to interfere with the plaintiff's peaceful possession and enjoyment over the plaint schedule property. Hence, she is constrained to file the suit.'

6.2 The defence of the defendants, in brief, is this: 'The plaintiff's husband during his life time had executed a registered gift deed dated 04.09.1962 in favour of his son Subba Rao. Under the said gift deed, he had gifted item nos. 1 to 3 of the said deed to his said son with absolute rights, but in respect of the item no.4 therein he had reserved life interest and had conferred the vested remainder rights on his said son. Thus, the husband of the 1st defendant was in possession and enjoyment of item nos.1 to 3 of the gift deed till his death. He had also purchased Ac.0.88 ½ cents and Ac.0.19 ½ cents of wet lands in D.No.112/5 of Poondla village from Koritala Brahmanandam under a contract of sale dated 05.04.1974. The Government had issued pattadar passbook in favour of the husband of the plaintiff in the year 1981 in respect of the said lands also. Item no.1 of the plaint schedule is part of item no.2 covered by registered gift deed dated 04.09.1962 and also the item no.1 of contract of sale dated 05.04.1974. Item no.2 of plaint schedule is item no.2 of contract of sale dated 05.04.1974 and item no.3 of the plaint schedule is the item no. 3 of the registered gift deed dated 04.09.1962. The husband of the 1st defendant had died

on 19.02.1988 and the husband of the plaintiff had died on 21.09.1989. Therefore, the husband of the 1st defendant had predeceased his father Venkateswarlu. Therefore, the contention of the plaintiff that after the death of her husband-Venkateswarlu, there was a family arrangement with her son is absolutely false. Since the date of death of her husband, the 1st defendant was and is in possession and enjoyment of the properties. The Government had issued pattadar passbook and title deed book in her favour. In fact, the plaintiff had resided with the 1st defendant and her son till July 2003. Having picked up quarrels, she had later left for her daughter's house at Ganapavaram; and, while leaving the house, she had taken away the pattadar passbook and title deed book relating to the property issued in favour of the 1st defendant besides the contract of sale, the cist receipts etcetera with a bad intention to create troubles to the 1st defendant and had managed the revenue officials and got her name incorporated in the pattadar passbook and title deed book. The plaintiff's suit is liable for dismissal.'

6.3 Taking into consideration the above pleadings, the trial Court had framed the following issues for trial:

- i) Whether the plaintiff is entitled for permanent injunction as prayed for?
- ii) To what relief?

6.4 On the side of the plaintiff, PWs 1 to 5 were examined and exhibits A1 to A14 were marked. DWs 1 to 4 were examined and exhibits B1 to B4 were marked on the side of the defendants. After full fledged trial, the trial court had decreed the suit of the plaintiff against the 1st defendant. The 2nd defendant had died even during the pendency of the suit. The Court of first appeal, having allowed the first appeal filed by the 1st defendant, had dismissed the suit of the plaintiff by reversing the decree and judgment of the trial court. Therefore, the aggrieved plaintiff is before this Court.

7. The learned counsel for the plaintiff would contend as follows: 'The trial Court had passed a well considered and reasoned judgment and had answered the relevant issues in favour of the plaintiff. The court of first appeal without properly considering

the facts and appreciating the oral and documentary evidence had erroneously reversed the well considered judgment of the trial court. The court below had failed to see that the oral evidence of PWs 1 to 5 coupled with the documentary evidence in the form of exhibits A1 to A14 clinchingly proved the physical possession of the plaintiff over the plaint schedule property. The court below ought to have seen that in a suit for perpetual injunction, the possession as on the date of the suit is only relevant. The court below had failed to consider the relevant material evidence and had erroneously held that in any view of the matter the plaintiff is a co-owner or joint owner of the properties and had unjustly not granted the perpetual injunction ignoring the fact that there is no need for the plaintiff who is aged 80 years to bring a false suit against her daughter-in-law and grandson (since died).'

8. On the other hand, the learned counsel for the 1st defendant while supporting the decree and the judgment of the court below had submitted as follows: 'The court below had accurately considered the facts and had further appreciated the evidence in the right perspective and had assigned valid and cogent reasons for reversing the decree and judgment of the trial court and for dismissing the suit of the plaintiff. The Court below had rightly noted that the family arrangement pleaded by the plaintiff with her son, after the death of her husband, is false as there is no possibility for such family arrangement to have taken place as the son of the plaintiff had pre-deceased his father. The plaintiff had come to Court with a false plea of family arrangement; and, when the very basis for the suit viz., the family arrangement, is found to be false, the court below cannot be found fault for dismissing the suit of the plaintiff for perpetual injunction as the relief of injunction being an equitable relief, the plaintiff, who has come to Court with unclean hands, is not entitled to the said relief.'

9. The crux of the case of the plaintiff is this: 'During the life times of her husband and son, there was a family arrangement. In that family arrangement between the husband of the plaintiff and son Subba Rao, the land in an extent of Ac.2.21 cents was allotted to the plaintiff's husband with an understanding that the same is to be enjoyed by the plaintiff towards her maintenance in case of her husband pre-

deceasing her. On the demise of the plaintiff's husband in or about 1998, there was a family arrangement between the plaintiff and her son to the effect that the plaintiff schedule property in a total extent of Ac.2.21 cents is to be enjoyed by the plaintiff and that she shall not claim any share in the property of her son. Even after the demise of her son, the said arrangement had continued. Accordingly, she is enjoying the plaintiff schedule property and also paying land revenue on the said property and had obtained pattadar passbook and title deed book in her favour in respect of the said land.' The plaintiff in her affidavit filed in lieu of her examination-in-chief had affirmed her pleaded case and had also exhibited exhibits A1 to A14, namely, pattadar passbook, title deed book, a bunch of tax receipts (A3 to A10), debit advice (exhibit A11), credit advice issued by Andhra Bank, Appikatta, credit vouchers (exhibits A12 and A13) and exhibit A14, the registered sale deed executed by Koritala Siva Prasad in favour of the plaintiff. The pleaded case of the defendant is already stated supra. The 1st defendant while reiterating her stand marked exhibits B1 to B4. The plaintiff had further examined PWs 2 to 5 as her supporting witnesses; and, DW4 was also examined on the side of the defendants. The evidence of DWs 2 and 3 was eschewed.

10. The initial onus of proof and the legal burden are on the plaintiff to prove the pleaded family arrangement between her and her son after the death of her husband. It is also for the plaintiff to prove her lawful possession over the plaintiff schedule property as on the date of the suit and at all relevant times. It is not in dispute that the husband of the plaintiff had died on 21st September 1989 and that the husband of the 1st defendant had died on 19.02.1988. Exhibits B3 and B4 are the death certificates respectively of Veeravalli Subba Rao and Veeravalli Venkateswarlu. Thus, it is clear from the admitted and established facts that the son of the plaintiff had predeceased her husband. Therefore, the question of any family arrangement between the plaintiff and her son, after the death of her husband, does not arise and therefore, it can safely be concluded that the family arrangement, which was pleaded and which is the basis for the reliefs claimed in the suit is false. Be that as it may. DW1 had stated that the plaintiff's husband had executed a registered gift deed dated 04.09.1962 under the original of exhibit B1 in favour of his son, i.e., the husband of the plaintiff and that at that time, the husband of the 1st defendant is a minor and was represented by his mother, the plaintiff, and that under

the said gift deed, item nos. 1 to 3 therein were given with absolute rights; and that in respect of item no.4, vested remainder was given reserving life interest. According to DW1, her husband had subsequently purchased two extents of Ac.0.88 ½ cents and Ac.0.19 ½ cents of wet lands in D.No.112/5 of Poondla village from Koritala Brahmanandam under a contract of sale dated 05.04.1974. She had further exhibited exhibit B2, the pattadar passbook issued in the name of her husband. In her cross-examination, PW1 had admitted that her husband had partitioned the joint family property 20 years back and that in the said partition, Ac.1.08 cents which is a part of the plaint schedule fell to the share of her husband and the remaining property fell to the share of her son and that her son, i.e., the husband of the plaintiff had purchased Ac.1.16 cents of the plaint schedule property from a person of Anantharam village during his life time. She had further stated that she had succeeded to the remaining Ac.1.07 cents subsequent to the death of her husband. Thus, her evidence is not in line with her pleadings. Therefore, what is pleaded in the pleadings is not translated into evidence and what is spoken to by her in her evidence does not find place in her pleadings. Exhibits A1 and A2 pattadar passbook and title deed book on a perusal would show that in the said documents, the name of the 1st defendant was struck off and the name of the plaintiff was inserted and the said corrections were not attested by any revenue official and hence, the said corrections, which are not authenticated and valid corrections do not support the case of the plaintiff. The plaintiff could not explain as to under what circumstances the said corrections were made. As already noted, the case of the plaintiff was based on a family arrangement between her and her son subsequent to the death of her husband; but, it is borne out by the evidence on record that there is no possibility for such a family arrangement between her and her son after the death her husband, as her son had predeceased her husband. Though she is entitled to a share in the properties of her son, after the death of her son, as per the provisions of the Hindu Succession Act, she can at best be a co-owner, as rightly observed by the court below in so far as the properties in respect of which the law of inheritance operates. Viewed thus, this Court finds that the court below had accurately considered the facts and appreciated the evidence in the right perspective and had correctly held that the plaintiff is not entitled to the perpetual injunction as the family arrangement, which is pleaded by her, is found to be false and as she is a co-owner/co-sharer, in the other view of the matter. Having regard to the reasons assigned, this Court finds that the substantial questions of law sought to be raised

are not substantial questions of law and that no such questions are involved in this appeal and that there is no substance in the questions raised and that, therefore, the appeal is liable to be dismissed at the admission stage being devoid of merit. 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. The view of this court is reinforced by the ratio in the decision in **Gurudev Kaur v. Kaki** (AIR 2006 SC 1975). In the case on hand, as this court finds, after careful examination of the pleadings, the evidence and the contentions, that no substantial question of law is involved. Accordingly, 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.

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

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

M. SEETHARAMA MURTI, J

29th July 2015

RAR