**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

**Second Appeal No. 472 of 2015**

**JUDGMENT:**

This Second Appeal is filed against the Judgment and Decree dated 20.06.2015 in A.S.No.62 of 2007, wherein the lower Appellate Court confirmed the judgment and decree of the trial Court in O.S.No.179 of 2002 dated 30.06.2006 wherein the trial Court granted decree of declaration of title declaring that the first respondent herein, who is the plaintiff, as absolute owner and possessor of the plaint schedule property and granted mandatory injunction against the defendants 1 and 7 to remove the structures in the plaint schedule property and deliver the vacant possession of the same to the plaintiff.

2. For the sake of convenience, the parties herein will hereinafter be referred to as arrayed in the Original Suit.

3. Brief facts which are necessary for disposal of the Second Appeal are as follows:

It is the case of the plaintiff that she is the owner of plot No.137, admeasuring 5 ½ cents in Sy.Nos. 55, 56/1, 56/2A, 56/2C3, having purchased the same from 5th defendant, being represented by its Managing Partners, i.e., defendants 5 and 6, through registered sale deed dated 01.12.1984. In the first week of June, 2002, when the plaintiff and her family members visited the suit site, they noticed that a house was erected in the suit site. On enquiry, it is informed to the plaintiff that the first defendant is the owner of the said property. Later when the plaintiff enquired with the Registrar's Office, she came to know that the 4th defendant has power of attorney of 3rd defendant to sell the suit property to 2nd defendant under a registered sale deed dated 01.10.1990. The defendants 3, 5 and 6 are the partners of Santhosh Estate Traders which was established on 01.07.1983. On 23.04.1987, the partners of the said firm executed a deed of dissolution and allotted the suit site to the share of 3rd defendant and he executed registered power of attorney dated 23.10.1987 in favour of 4th defendant to sell the suit property. The 2nd defendant having purchased the suit site on 01.10.1990 sold the same in favour of the first defendant under a registered sale deed dated 21.10.1991. The 1st defendant sold part of suit property in favour of 7th defendant. The plaintiff besides orally requesting the inmates of the suit house located in the suit site to demolish the structures and deliver possession to her, she got issued legal notice to the first defendant on 28.01.2002 and that the first defendant failed to respond to the demand of the plaintiff.

4. The first defendant filed written statement denying the averments in the plaint stating that the authorization given by the plaintiff to file the suit on her behalf is false, as such, the suit is not maintainable. Originally the suit schedule property belongs to the 5th defendant, of which, the 3rd defendant was one of the partners. In the year 1987, the said firm was dissolved and as per the Deed of Dissolution dated 23.04.1987, the suit site fell to the share of 3rd defendant. The 3rd defendant being the absolute owner, sold the suit plot to 2nd defendant under a registered sale deed dated 01.10.1990 executed through his General Power of Attorney Holder i.e., 4th defendant. The 2nd defendant in turn sold the suit site under a registered sale deed dated 21.10.1991 in favour of the first defendant and delivered possession. Hence, the 1st defendant has been in possession and enjoyment of the suit site in his own right, to the knowledge of one and all. The 1st defendant sold eastern half of the suit site to one Ismail. It is stated that the 1st defendant is a bonafide purchaser for valuable consideration and has been in possession and enjoyment having constructed house and thereby perfected his title by means of adverse

possession and that the plaintiff has no right to suit the 1st defendant and sought for dismissal of the suit.

5. The 2nd defendant filed written statement reiterating the averments of the 1st defendant stating that he is the bonafide purchaser of the suit property and later sold the same to 1st defendant and delivered possession to him; that the suit is time barred, as such, the same is liable to be dismissed.

6. The 4th defendant filed written statement reiterating the averments of 1st defendant stating that from the date of execution of General Power of Attorney by the 3rd defendant in his favour, the 3rd defendant is rightful owner of the suit property. As such, the execution of the sale deed in respect of the suit property in favour of 2nd defendant and latter 2nd defendant executing a registered sale deed in favour of 1st defendant are valid.

7. The 6th defendant filed written statement reiterating the averments of 1st and 4th defendants, stating that he was not the Managing Partner of the Santhosh Estate Traders, Kurnool. This defendant and 5th defendant never requested the plaintiff to purchase the suit property. This defendant never allotted the suit property to the 3rd defendant. This defendant never acted against the interest of the plaintiff, as such, he is not liable to compensate Rs.1,50,000/- by way of damages to the plaintiff. It is also stated that there is no dispute with regard to the title of the suit schedule property and the dispute is only with regard to the possession of the suit property.

8. The 7th defendant filed written statement reiterating the averments of the 1st, 4th and 6th defendants stating that she is the bonafide purchaser of the suit property, as such, the suit is liable to be dismissed. The 3rd and 5th defendants remained *ex parte* before the

Court below.

9. Based on the above pleads, the following issues have been framed by the Court below.

1) Whether the suit filed by the authorized agent of the plaintiff is valid and maintainable?
2) Whether the suit sale deed dated 1.12.1984 executed by D5 & D6 in favour of the plaintiff is true, valid and binding on the defendants 1 to 4?
3) Whether the Defendant No.2 is a bonafide purchaser for value from D3 and that the 2nd defendant is also a bonafide purchaser for value of the suit schedule property from D1?
4) Whether the claim of the plaintiff for declaration and for delivery of possession is barred by limitation?
5) Whether the 3rd defendant or his General Power of Attorney holder i.e., D4 are having any right over the suit schedule property to execute a sale deed in favour of D2?
6) Whether the plaintiff is entitled for declaration of his title over the suit schedule as prayed for?
7) Whether the plaintiff entitled for delivery of vacant possession of the suit schedule for the 1st defendant as prayed for?
8) Whether the plaintiff is entitled for mandatory injunction as prayed for?
9) Whether the plaintiff is entitled for Rs.1,50,000/-as damages against D3 to D6 and for future interest as prayed for?
10) To what relief?

9.1 Additional issues framed on 15.10.2003:

1) Whether the suit is barred by limitation?
2) Whether the sale of plaint schedule property by D2 in favour of D1 is valid and binding on the plaintiff?

9.2 Additional issues framed on 29.09.2004:

1) Whether the alleged sale of eastern half of the site purchased by D1 from D2 in favour of one Ismail is true?
2) Whether one Ismail alleged purchaser from the 1st defendant is a necessary party to the suit and the suit is bad for non-joinder of necessary parties?
3) Whether D1 has perfected his title for the site purchased by him by adverse possession as pleaded by D1?

9.3 Additional issues were framed on 06.10.2005:

1) Whether one P.Sridhar Reddy is necessary party to the suit and that the suit is bad for misjoinder of necessary parites to the suit?
2) Whether the 7th defendant has perfected his title to the eastern half of the suit house plot by adverse possession as pleaded by the 7th defendant?
3) Whether the 7th defendant is bonafide purchaser and that the plaintiff is not entitled to claim any relief against him?

10. On behalf of the plaintiff, P.Ws.1 and 2 were examined and got marked Exs.A1 to A9. On behalf of the defendants, D.Ws.1 and 2 were examined and got marked Exs.B1 to B4. Basing on the oral and documentary evidence adduced on either side, the Court below decreed the suit with costs declaring the title of the plaintiff over the suit property and further directed the defendants 1 and 7 by means of mandatory injunction, to remove the structures and deliver vacant possession to the plaintiff within three months from the date of judgment. However, the suit of the plaintiff was dismissed with regard to damages of Rs.1,50,000/-.

11. Aggrieved by the judgment of the trial Court, the defendants 1 and 7 filed A.S.No.62 of 2007 and the same was dismissed on 20.06.2015 confirming the judgment and decree passed by the trial Court on 30.06.2006 in O.S.No.179 of 2002. Aggrieved by the dismissal of the Appeal by the lower Appellate Court, the present Second Appeal is filed by appellant Nos.3 to 8, who are legal heirs of 7th defendant in the suit.

12. Sri O.Manoher Reddy, learned counsel for the appellants submit that as per Section 27 of the Limitation Act, 1963 the suit filed by the first respondent/plaintiff is barred by limitation, as the suit plot is allotted to the share of 3rd defendant on 23.04.1987 and the suit is filed in the year 2002. He also contends that the 7th defendant was impleaded as party in the year 2005 and as per Section 21 of the Limitation Act, unless he is deemed to be made as a party in the year

2005 to the suit and Court has not passed any order under the proviso to Section 21 of the Limitation Act, as such, the suit is barred by limitation under Article 64 of the Limitation Act.

13. On the other hand, Sri K.Rathangapani Reddy, learned counsel for the first respondent/plaintiff submits that defendant No.7 has not examined herself before the trial Court except filing written statement. He would further contend that mere pleading of adverse possession by the defendants is not sufficient, but the same has to be proved by adducing evidence. He would further contend that no evidence is let in by the 7th defendant, as such, she cannot claim adverse possession over the suit property. He would further contend that when the 1st defendant himself has no knowledge about the title of the plaintiff over the suit property, the question of tacking the possession of part of suit property by the 7th defendant through the evidence of D.W.1 does not arise at all. He would further contend that the 7th defendant is setting up title through registered sale deed and also under adverse possession, which cannot be permitted. He also contends that when once the 5th defendant has sold the property as a partnership firm in favour of the plaintiff on 01.12.1984 under Ex.A1, the question of allotment of the said property towards the share of 3rd defendant on 23.04.1987 does not arise. He also contends that the defendants 3, 5 and 6 have not examined themselves before the Court below to prove that the 3rd defendant was allotted the suit property and was put into possession. Therefore, the sale in favour of the 1st and 2nd defendants is also not proved. He also contends that without obtaining any Encumbrance Certificates from the registering authority, the 1st, 2nd and 7th defendants purchased the suit property, as such, they are not bonafide purchasers. He also submits that Ex.A4 is the Encumbrance Certificate relating to suit plot and it clearly discloses

Ex.A1 transaction, as such, if the defendants 1 and 2 have applied for Encumbrance Certificate prior to purchase of the suit plot under Exs.A3 and A4, they would have got knowledge about the purchase of the suit property by the plaintiff under Ex.A1.

14. The case of the 7th defendant is based on the original registered sale deed 22.12.1997 executed by the 1st defendant and also the original tax receipts paid by the 7th defendant in respect of the house constructed on the eastern part of the suit plot. The 7th defendant also pleads adverse possession contending that the suit is barred by limitation under Section 27 and Article 64 of the Limitation Act.

Section 21 of the Limitation Act, 1963 reads as follows:

**21. Effect of substituting or adding new plaintiff or defendant**

(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

PROVIDED that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Section 27 of the Limitation Act, 1963 reads as follows:

**27. Extinguishment of right to property**

At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

15. It is to be seen that the trial Court has negatived the contentions of other defendants and found that the 3rd defendant has no power to sell the property in favour of defendants 1 and 2, as the suit plot was sold by the 5th defendant through 6th defendant in favour of the plaintiff on 1.12.1984. The trial Court also held that the defendants 3 and 5

have not examined themselves to show that the suit plot was allotted in favour of the $3^{rd}$ defendant in view of the dissolution of partnership i.e., $5^{th}$ defendant. Moreover, the deed of dissolution of partnership is also not filed and that the defendants 3 and 5 remained *ex parte* before the trial Court. The trial Court as well as lower Appellate Court observed that the alleged Deed of Dissolution of Partnership firm dated 23.04.1987 has not been filed and no evidence is let in to show that the suit plot was allotted in favour of $3^{rd}$ defendant in the said deed of dissolution. In pursuant to the same, the $3^{rd}$ defendant entered into possession and remained there till it was sold by the $4^{th}$ defendant under original registered sale deed under Ex.A2 dated 01.10.1990 in favour of $2^{nd}$ defendant. More over, the defendants 3 to 6 failed to adduce any evidence before the trial Court. The plaintiff has categorically denied about the execution of deed of Dissolution. The defendants have not discharged their burden about execution of deed of dissolution and allotment of suit plot in favour of $3^{rd}$ defendant including delivery of possession, which is alleged to be sold by the $4^{th}$ defendant in favour of the $2^{nd}$ defendant. Both the trial Court and the lower Appellate Court have negatived the contention of the defendants that the possession of the defendants 1 and 2 should be reckoned from 23.04.1987, on which date, the alleged deed of dissolution of partnership came into existence and when that is the case, the question of suit being barred by limitation does not arise at all. It is also an admitted fact that the $1^{st}$ and $7^{th}$ defendants, for the first time, they came to know about P.W.1 when she came to the suit property in the first week of June, 2002 and that till then, the $1^{st}$ and $7^{th}$ defendants have no knowledge about P.W.1 or the contention of P.W.1 that she purchased the suit property under Ex.A1. More over, D.Ws.1 and 2 clearly stated that prior to the purchase of the suit properties under Exs.A2 and A3 they have not obtained any encumbrance certificate from the registration authorities and they have not given any paper notice in the news papers calling upon the objections of anybody relating to the suit property.

16. The lower Appellate Court, after considering the case of the 7th defendant, dismissed the Appeal and negatived the contentions of all the defendants including the 7th defendant. The 7th defendant has not let in any evidence except pleading that the suit is barred by limitation. When the defendants 1 and 2 have not proved the sale of suit property by 3rd defendant through General Power of Attorney Holder, 4th defendant, the question of 7th defendant having better title does not arise at all. Since 7th defendant is claiming right over the suit property through 1st defendant, when the case of 1st defendant itself is negatived by the both the Courts below, the 7th defendant cannot stand on better footing. The question of tacking possession of 7th defendant through 1st defendant also does not arise. In view of the above facts and circumstances, as rightly contended by the learned counsel for the plaintiff, the 7th defendant cannot have better title than that of 1st and 2nd defendants, whose case was negatived by the Courts below. Both the Courts below have rightly appreciated the evidence let in by the plaintiff and defendants, as such, the same cannot be re-appreciated in this Appeal by exercising power under Section 100 of Civil Procedure Code. The trial Court has elaborately dealt with the issues framed by it and the lower Appellate Court also appreciated the evidence let in by both sides. The concurrent findings arrived at by both the Courts below cannot be disturbed by re-appreciating the evidence in the Second Appeal. No substantial question of law is involved in the Second Appeal and the so-called substantial question of law raised in the ground Nos.1 to 9 pertains to appreciation of facts

and appreciation of evidence, which cannot be stated to be a question of law muchless the substantial questions of law.

In view of above discussion, the Second Appeal is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, in this Second Appeal, shall stand dismissed.

**A.RAJASHEKER REDDY, J**

**01.09.2015.**
KVS

**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

-
-
-

**S.A. No.472 OF 2015**

**Date: 01-09-2015**

KVS