

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

SECOND APPEAL NO.155 OF 2014

JUDGMENT:

The appellant herein is the plaintiff in O.S.No.173 of 2001, a suit filed for declaration of her title over the plaint schedule property, and to direct the defendants to vacate and deliver possession thereof to her.

By the order in O.S.No.173 of 2001 dated 16.06.2004, the learned II Additional Junior Civil Judge, Chittoor, held that the documentary evidence on record showed that the defendants were in permissive possession of the suit hut, and were bound to evict the same; the plaintiff had a patta over the suit property under Ex.A3, and she was entitled to claim right over the suit premises. The suit was decreed with costs. Aggrieved thereby, the respondent herein carried the matter in appeal in A.S.No.128 of 2004. The learned I Additional District Judge, Chittoor, by his order in A.S.No.128 of 2004 dated 21.02.2012, allowed the appeal and set aside the judgment and decree in O.S.No.173 of 2001 dated 16.06.2004.

In its order in A.S.No.128 of 2004 dated 21.02.2012, the appellate Court held that the points for consideration in the appeal were (1) whether the respondent-plaintiff was the absolute owner of the suit property; (2) whether the appellants-defendants were in permissive possession of the suit property; (3) whether the appellants-defendants were liable to be evicted from the suit property; and (4) whether the judgment and decree of the trial Court was liable to be set aside? On point No.1, the appellate Court held that the respondent-plaintiff had stated that the subject hut had been in existence ever since the time of the ancestors of her husband; she had also filed another suit in O.S.No.164 of 2003 on the file of the same Court; a copy of the plaint in O.S.No.164 of 2003 was marked as Ex.B1; the plaint 'A' schedule property in Ex.B1, and the suit property in the appeal (A.S.No.128 of 2004) were one and the same, i.e., an extent of Ac.0.02 cents in Survey No.213/5; in Ex.B1-plaint, the respondent-plaintiff had stated that plaint 'A' schedule property was the ancestral property of her husband, and they were in possession and enjoyment of the same since times immemorial; she was a poor person; the Government had provided housing finance to the economically poor; and, in that connection, the Government had granted house site pattas to the poor. The appellate Court held that, both in her

oral evidence as P.W.1 and in her pleadings in O.S.No.164 of 2003, the respondent-plaintiff had asserted that the suit property was her ancestral property; therefore, Ex.A3-patta could not be the document of title over the suit schedule property; it appeared that the patta was issued to facilitate the occupants to get loans; there was no evidence to show that the suit schedule property was plot No.6 covered by Ex.A3-patta; no boundary was mentioned in Ex.A3 or in Exs.X3 and X4; none of the documents filed by the respondent-plaintiff proved her title over the suit property; P.W.2 was not even aware of the description of the suit property; he (P.W.2) stated that the respondent-plaintiff had constructed the house ten years ago, and the appellants-defendants were in possession of the same since two years; it was nobody's case that the appellants-defendants were in possession of the property since two years only; and, even according to the respondent-plaintiff, the appellants-defendants were in possession since 1994.

The appellate Court further held that, as against the evidence of the respondent-plaintiff, the appellants-defendants had contended that it was their ancestral property; P.W.1 had ultimately admitted that it was the ancestral property of her husband; the appellants had also contended that the disputed house bears door number 1-57, and had marked Exs.X1 and X2; it was elicited from D.W.2 that the door number was not mentioned in Exs.X1 and X2; according to the respondent-plaintiff, the appellants had to reside in the suit house, as they had no other house; and this portion of the respondent's case was disproved by the evidence of D.W.1. The appellate Court observed that the counsel for the appellant had pointed out that the Sarpanch was a relative of the respondent, as per the evidence of D.W.5; there was no co-operation by the Sarpanch and there was non-production of registers for the previous years; with regards to the door number found on the disputed house, the respondent-plaintiff had stated that the appellants-defendants had removed the door number from their house, erected it on the suit house and, therefore, the door number found on the suit house was the door number of their house; no such pleading was found in the plaint; it was a belated explanation, which could not be accepted; and, even if the appellants failed to prove their case, the respondent-plaintiff could not take advantage of the same. The appellate Court held that the respondent-plaintiff had failed to prove her title over the suit property.

On Point No.2, the appellate Court held that the evidence of P.W.2 was totally unsatisfactory; the respondent-plaintiff had failed to prove her plea that the

appellants were in possession of the suit property with her permission; and this point was also required to be answered in favour of the appellants and against the respondent. On point No.3, the appellate Court held that it was elicited from the evidence of the respondent that there were two portions - one facing towards the north and the other facing towards the south; the appellants were in occupation of the house which was facing towards the north, and the respondent was occupying the house facing towards the south; the appellants had pleaded that the respondent-plaintiff was in possession of the house facing towards the north with their permission; the trial Judge had extracted the said sentence, and had concluded that the appellants had admitted that they were in permissive possession; the trial Judge had erroneously observed that the suit plot was not ancestral property in view of Ex.A3-patta, and that documentary evidence prevails over oral evidence; in the present case, P.W.1 herself categorically admitted that it was her ancestral property; such an allegation was also found in Ex.B1 plaint filed by the respondent; and the findings, of the learned trial Judge in that case, were in favour of the appellants, and against the respondent. The appeal was allowed and the judgment and decree of the trial Court in O.S.No.173 of 2001 dated 16.06.2004 was set aside.

Before this Court, Sri R.Dheeraj Singh, learned counsel for the appellant, would reiterate the same contentions that were urged before the appellate Court. Learned counsel would submit that the appellant in the Second Appeal (plaintiff in O.S.No.173 of 2001) had given permissive possession, of the suit schedule property, to the respondent-defendants for which patta had been granted in the appellant-plaintiff's favour in Ex.A3.

The appellate Court has rightly held that the plaint filed by the appellant-plaintiff, in O.S.No.164 of 2003 which was marked as Ex.B1, contained her plea that the suit property was the ancestral property of her husband, and they have been in possession since times immemorial; and, in the light of this specific assertion, Ex.A3-patta was evidently given only to obtain loans and was not a document of title over the suit schedule property. The appellate Court further held that the appellant-plaintiff had failed to establish that she had given permissive possession to the respondents-defendants.

The jurisdiction which this Court exercises, under Section 100 of the Code of Civil Procedure, 1908 (CPC), is only on a substantial question of law. While perversity of findings, or findings based on no evidence, give rise to a substantial question of law,

it is not even the case of the appellant-plaintiff before this Court that the order of the appellate Court suffers from any such infirmity. As noted hereinabove, the appellate Court has elaborately examined the evidence on record, and has come to the conclusion that the appellant-plaintiff had failed to establish that the possession, of the defendants in the suit, was permissive; and, in the absence of any proof to show that they had title over the suit schedule property, they were not entitled either for declaration of right and title over the said property or for delivery of possession. I find no legal infirmity, in the order of the appellate Court, necessitating interference in proceedings under Section 100 CPC.

The Second Appeal is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand cancelled.

(RAMESH RANGANATHAN, J)

27th March 2015

RRB