

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.460 OF 2006

Dated 24-2-2015

Between:

Chitti Kanaka Mahalakshmi,

_____..Appellant.

And:

_____Chitti Narasinga Rao and others.

_____..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.460 OF 2006

JUDGMENT:

This appeal is preferred against judgment dated 9-12-2005 in A.S.No.11 of 2004 on the file of Senior Civil Judge, Gajuwaka, whereunder judgment dated 17-3-2004 in O.S.No.425 of 2002 on the file of Junior Civil Judge, Gajuwaka, is confirmed.

Brief facts leading to this appeal are as follows:

Appellant herein is the plaintiff and respondents herein are defendants in the above referred suit. Parties will hereinafter be referred to as "plaintiff and defendant" as arrayed in the suit for the sake of convenience.

Appellant herein filed O.S.No.425 of 2002 seeking permanent injunction in respect of schedule property which is two thatched houses in Gajuwaka. According to plaintiff, defendants and themselves are legal heirs of late Appalaswamy and the plaintiff's husband got this property towards her share through settlement deed dated 18-8-1993 and since then, he has been in possession and enjoyment of the plaint schedule property and after the death of husband, plaintiff continued to enjoy the property

as the defendants and their henchmen tried to enter into the schedule properties on 28-7-2002, therefore, she was forced to file the suit for permanent injunction.

Defendants resisted the claim of the plaintiff and contended that she is not the wife of Sombabu and she has no right in the schedule property and in order to grab the plaint schedule property, she filed the suit and that the property still stands in the name of wife of Appala Swamy.

On these contentions, three witnesses are examined and three documents are marked on behalf of plaintiff and one witness is examined and two documents are marked on behalf of defendants.

On an over all consideration of oral and documentary evidence, trial court held that plaintiff failed to prove that her husband got property under settlement deed dated 18-8-1993 and enjoying the property and dismissed the suit. Aggrieved by the same, plaintiff preferred the appeal to the appellate court and the Senior Civil Judge, Gajuwaka dismissed the appeal and confirmed the judgment of the trial court. Now aggrieved by the same, present appeal is preferred.

This court admitted the appeal, considering the following as substantial question of law.

“1) Whether, in a case where plaintiff has set-up title through a document calling it to be a family settlement and the defendant has not denied the same in the written statement, the court can pass a judgment against such deemed admissions under Or.8, Rule 3 CPC and hold against such document?”

2). Whether, when a document is marked in the evidence affidavit filed under Or.18, R.4(i) Proviso, the court without giving a reasoning as to inadmissibility of the document, is entitled to hold against the document by totaling ignoring the document which is marked in the affidavit as A.1?”

Heard arguments.

According to advocate for plaintiff, the family settlement deed pleaded by plaintiff in the plaint is not denied in the written statement and therefore, the court

ought to have passed a judgment treating it as deemed admission under Order 8 Rule 3 C.P.C. and that is the substantial question of law. It is further argued that the trial court has not considered the documents and receipts produced on behalf of plaintiff and dismissed the suit for non-production of the document dated 18-8-1993, in which, plaintiff's husband got property and both the courts erred in dismissing the claim of the plaintiff.

On the other hand, advocate for defendants submitted that document dated 18-8-1993 is not admissible in evidence as it is a unregistered document and not stamped. He further submitted that when the plaintiff specifically contended that she has legal right over the property, it is for the plaintiff to establish and as she failed to substantiate her claim, both the courts rightly dismissed the suit and there is no substantial question of law to be taken by this court.

Now the point that would arise for my consideration in this second appeal is whether there is any substantial question of law to be taken by this court.

POINT:

As seen from the pleadings, according to plaintiff, she is the owner of schedule property and the same is given to her husband under family settlement deed dated 18-8-1993. As seen from the record, this is an unregistered settlement deed said to have been executed in favour of the plaintiff's husband, which was not admitted in evidence. Plaintiff has not taken any steps to see that document is impounded or marked during evidence as her main claim is based on the said document. Plaintiff claimed possession of the suit property on the basis of title and though this document is of the year 1993, no demand notices and receipts are filed to show the enjoyment of the property of her husband till his death. The documents filed are of the year 2002 i.e., the year in

which the suit is filed. Both trial court and appellate court observed that there is no evidence to show that the plaintiff's husband got this property and enjoyed it in his own right. On the other hand, evidence on record discloses that property was in the name of mother of plaintiff's husband in the Government records. So, as rightly pointed out by advocate for respondents, no substantial question of law is involved. The contention of the plaintiff that decree has to be passed for not disputing the document dated 18-8-1993 in the written statement, cannot be accepted because there is no admission on the part of the defendants with regard to this document and particularly, when this document is an inadmissible document, the plaintiff cannot rely on such document as rightly observed by both courts. Plaintiff has miserably failed to prove her title to the property and possession thereon and as such, she is not entitled for the relief of injunction. If really, plaintiff has got any right over the property, she has to file appropriate suit either for declaration of title or for partition of her husband's share but a suit of this nature is definitely not maintainable and both the courts were right in dismissing her claim.

For these reasons, I am of the view that there is no question of law involved in this Second Appeal, much less, substantial question of law and this Second Appeal is devoid of merits. However, plaintiff is at liberty to take appropriate steps in respect of her legal right over the schedule property if her claim is in time.

With this observation, this Second Appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 24-2-2015.

Dvs.

Dated 24-2-2015
