

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.694 of 1999

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JUDGMENT:

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The unsuccessful plaintiff preferred this appeal under Section 100 of the Code of Civil Procedure ('the Code', for brevity) assailing the decree and judgment dated 03.06.1999 of the learned II Additional Chief Judge, City Civil Court, Hyderabad passed in AS.No.432 of 1997 whereby the learned Additional Chief Judge while dismissing the said appeal had confirmed the decree and judgment dated 17.10.1997 of the learned IX Assistant Judge, City Civil Court, Hyderabad in OS.No.7389 of 1991 filed by the plaintiff against the sole defendant for a declaration of title and recovery of possession and for other reliefs.

2. I have heard the submissions of the learned Senior Counsel for the appellant/plaintiff and the learned Senior Counsel for the respondents. I have perused the material record.

3. The sole plaintiff had brought a suit against the sole defendant for declaration of title and recovery of possession and for other reliefs. The sole defendant had resisted the suit. On merits, the trial Court had dismissed the suit. During the pendency of the first appeal preferred by the plaintiff, the sole defendant/1st respondent died and his LRs were brought on record as respondents 2 to 8 in the first appeal. On merits, the Court below had dismissed the first appeal confirming the decree and judgment of the trial Court. Therefore, the unsuccessful plaintiff is before this Court.

4. The learned senior counsel for the appellant/plaintiff would contend as follows: "The Court below fell in serious error in holding that the

appellant/plaintiff has no locus standi to challenge the earlier order passed in IA.No.1037 of 1987 in OS.No.2921 of 1986 on the file of the Court of the learned VI Assistant Judge, City Civil Court, Hyderabad on the ground that the plaintiff was not a party to the suit and that the same would not bind him. The Court below ought to have seen that a substantive right of the plaintiff is involved and that the plaintiff is entitled to seek cancellation of the said order and decree and that the said right is available under Section 31 of the Specific Relief Act and that if the same are left unchallenged, they would cause serious injury to the plaintiff. The Court below erred in holding that the plaintiff had not proved his title to the suit schedule property. The Court below ought to have held in favour of the plaintiff on the issue of title in view of the assignment of the decree dated 02.11.1987 in EA.77 of 1987 in OS.No.984 of 1986 on the file of the Court of the V Assistant Judge and by virtue of the regular registered sale deed dated 21.01.1988 executed by the said Court in favour of the plaintiff. Instead of dismissing the suit, the Court below ought to have declared that the plaintiff is the owner. The Court below ought not to have held that the title of the original owner was not established. The Court below ought to have seen and ought to have held that the plaintiff has better title than the defendant and that the defendant had not even disclosed the source of title. The Court below erred in holding that the close relationship between the parties vitiated title of the plaintiff though the plaintiff has become owner of the property by virtue of a decree of a Court, which was assigned to the plaintiff and a sale deed executed by a Civil Court pursuant to the said assigned decree.

5. On the other hand, the learned senior counsel for the respondents/defendants would contend that the Courts below having accurately considered the facts and properly appreciated the evidence had recorded concurrent findings of fact on all the issues and that none

of the contentions raised are questions of law much less substantial questions of law and that this Court need not make a roving enquiry into the factual arena and that there is neither improper appreciation of facts and evidence nor non consideration of material evidence and that, therefore, there is no need for re-appreciation of evidence and that in the facts and circumstances of the case, no substantial questions of law are involved and emerge from the findings of the facts recorded by the Courts below and hence, the second appeal is devoid of merit and is liable to be dismissed.

6. Having regard to the submissions, I have carefully gone through the pleadings and analytically examined the reasoning of the Courts below in support of the findings to arrive at a just decision as to whether any substantial questions of law are involved in this appeal.

7. The case of the plaintiff is that the suit property originally belonged to one Smt. Mohammadi Begum and that she had entered into an agreement of sale to sell the same to one Mohd. Shareef and that when she had failed to perform her part of the contract, the said Shareef had filed a suit in OS.No.984 of 1986 on the file of the Court of the V Assistant Judge, City Civil Court, Hyderabad against the said Mohammadi Begum for specific performance and that the said suit was decreed directing the said Mohammadi Begum to execute a sale deed in favour of the said Shareef and that while things stood thus, the said Shareef had assigned the said decree for specific performance in favour of the present plaintiff by obtaining orders from the Court in E.A.No.79 of 1987 and that later the Court had executed a registered sale deed in favour of the plaintiff and delivered possession of the suit property to the plaintiff on 19.04.1988 and that later one Mohd. Naseeruddin who was said to be a tenant of the property under the original owner Mohammadi Begum had filed OS.No.2921 of 1986 for perpetual injunction and had obtained temporary injunction orders and that in that suit the present

plaintiff had filed interlocutory applications seeking restoration of possession of property on the ground that he was dispossessed and that in the circumstances the present plaintiff who was dispossessed from the plaint schedule property is constrained to file the suit for declaration of title and recovery of possession.

8. The sole defendant having denied the ownership of Mohammadi Begum and her right, title and interest as well as possession over the property had *inter alia* contended that the two earlier suits OS.No.984 of 1986 and 2921 of 1986 are collusive suits between the parties who are relatives and that the suits amongst close relatives were instituted to make the Courts believe that Mohammadi Begum was the original owner. The specific case of the defendant is that the property originally belonged to one Jagadish Pershad Gupta and that he had entered into an agreement to sell the same to the defendant and that the suit property never belonged to Mohammadi Begum and that the said Naseeruddin was never a tenant.

9. In a suit of this nature, the initial onus of proof as well as the legal burden lie on the plaintiff and the law is well settled that in a suit for declaration of title and recovery of possession, the plaintiff succeeds on his own strength and not on the weakness of the defendant, if any. The plaintiff did not examine the said Mohammadi Begum who is said to be the original owner of the property having admitted that the said Mohammadi Begum and the said Naseeruddin who was said to be a tenant in the property are his close relatives. In his evidence, the plaintiff had also stated that his father knows everything about the transaction, but, did not examine even his father. Thus, the plaintiff who had no knowledge of the facts could either establish his title to the property or the pleaded facts. In the said circumstances the plaintiff ought to have examined either his father or the original owner, who are the material witnesses. The plaintiff who claims title from the vendor

Mohammadi Begum could not establish her title and the source of her title to the property. Thus, when the ownership of Mohammadi Begum, the original owner, is not established, the question of title to the suit property passing to the plaintiff does not arise. No valid document whereunder the said Mohammadi Begum had acquired lawful title to the schedule property is exhibited and there is not even a foundation in the pleading in regard to the source of title of the said Begum. The decisions in **Sundaram v. Lakshmikantham**^[1] and **Union of India and others v. Vasavi Co-operative Housing Society and others**^[2] support the proposition that in a suit for declaration of title the plaintiff can succeed only on the basis of a valid title to the property and that the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendant would not be a ground to grant the relief. In view of the settled legal position that the plaintiff succeeds on his own strength and not on the weakness of the defendant and the further fact that there is no warranty of title simply because the Court has executed a sale deed, it is manifest that the plaintiff had failed to prove his title as required under facts and in law and is, therefore, not entitled to the relief of declaration of title and recovery of possession.

10. Having regard to the facts and circumstances of the case and the evidence brought on record, the Courts below have concurrently held that the plaintiff had miserably failed to prove the title of Mohammadi Begum and that, therefore, when the alleged ownership of Mohammadi Begum is not established, the question of passing of title to the present plaintiff does not arise and that, therefore, the plaintiff had failed to prove his title and right to recover possession of the suit schedule property and had accordingly dismissed the suit and the appeal suit. Having regard to afore mentioned reasons, this Court finds that there is no substance in any of the questions raised in this appeal as substantial questions of law

and that no substantial questions of law are involved in this appeal.

11. Viewed thus, this Court finds that there are no valid and sufficient grounds calling for interference with the decrees and judgments of the Courts below whereunder concurrent findings supported by valid and sufficient reasons are recorded.

12. Accordingly, the Second Appeal is dismissed with costs.

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

JUSTICE M. SEETHARAMA MURTI

11th June,, 2015
Vj/

[\[1\]](#) CDJ 2007 MHC 1562

[\[2\]](#) CDJ SC 6