

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

SECOND APPEAL No.755 of 2014

JUDGMENT:

This Second Appeal is filed challenging the judgment and decree dt.24-04-2014 in A.S.No.35 of 2012 of the Judge, Family Court-cum-VI Additional District Judge, Kadapa confirming the judgment and decree dt.30-03-2012 in O.S.No.108 of 2004 of the Junior Civil Judge, Pulivendla.

2. The appellant herein is plaintiff in the above suit. He filed the suit for declaration of his title and for recovery of possession and for a direction to 2nd respondent to remove certain constructions made in the plaint schedule property.
3. The plaint schedule property is a site located in Vempalli village on the southern side Ac.0.10 1/3 cents out of Ac.3.33 cents in Sy.No.395/1 marked as "DFOG" and "FORC" in the plaint plan.
4. Plaintiff's case is that he purchased an extent of Ac.0.10 1/3 cents in Sy.No.395/1 under Ex.A-1 registered sale deed dt.07-10-1978 from one Seetharamaiah; that he constructed a house shown as "PQRS" in the site purchased under said sale deed; that in the said sale deed, the plaintiff's vendor had stated the boundaries to the house site sold to plaintiff and he had also stated in the said sale deed that plaintiff can enjoy the site "BCDGI" on southern side of the house site and whenever he wants to sell it, he can sell it without consideration and till then the plaintiff can enjoy it. He contended that 1st defendant purchased "ABCD" site shown in the plaint

plan under a registered sale deed Ex.A-3 from one Hussain Sab and that the said land is in Sy.No.394/2 and the sale deed of 1st defendant specifically mentioned that the land on the eastern and southern side belonged to Seetharamaiah, vendor of plaintiff. He alleged that a portion of this "ABCD" site was gifted by 1st defendant to

2nd defendant under Ex.A-2 gift deed dt.06-03-1998 and another portion was sold by 1st defendant to her nephew under Ex.B-4 sale deed; that these are shown as "EFBC", "AEFD" and "DFOG" in the plaint plan; all these sites form part of the land which originally belonged to Seetharamaiah, which were permitted to be enjoyed by plaintiff by Seetharamaiah in the sale deed Ex.A-1 dt.07-10-1978; and 1st defendant had no right to gift or sell any portion of this property to defendant Nos.2 and 3. He contended that Seetharamaiah died 20 years back without selling the property to anybody and since the plaintiff was in possession and enjoyment of the same under Ex.A-1, the defendants cannot occupy the same. The plaintiff alleged that he used to enjoy the southern side by keeping hayrick, sticks and other belongings of his and he has also perfected his title to the suit schedule property by adverse possession since 1978 and so he filed the above suit.

5. Defendant Nos.1 to 3, on the other hand, contended that they did not know what extent of land was purchased by plaintiff under sale deed dt.07-10-1978 from Seetharamaiah, but admitted that plaintiff had constructed the house "PQRS" on the site purchased by him. They alleged that plaintiff encroached into the site of Seetharamaiah without leaving any site on the

South and constructed a compound wall by annexing the entire site. They alleged that plaintiff is not the owner of the land "BCDGH" and he had not obtained any registered deed from Seetharamaiah or his legal heirs for this site and pleaded that it belongs to defendants since it is on the back side of their houses. They alleged that the plaintiff was never in possession and enjoyment of the site and he is not the real owner thereof since he himself admitted that it belongs to Seetharamaiah. They alleged that the disputed site and the house of plaintiff are bifurcated by road. They alleged that the plaintiff had purchased the site in Sy.No.395/1 while the houses of defendants and the alleged disputed site are in Sy.No.394/2 and that was why the plaintiff did not mention in which survey number the suit schedule site of Seetharamaiah exists, did not mention the extent and boundaries; and did not state whether Seetharamaiah is the owner of the land in Sy.No.394/2 and its extent. They also disputed the correctness of the plan filed by plaintiff. Defendants further denied that they occupied any extent of the land belonging to plaintiff.

6. The Court below framed the following issues and additional issues:

- "1. Whether the defendants were in possession and enjoyment of the suit site as the site is part and parcel of their houses since 1976?*
- 2. Whether the plaintiff has perfected his title to the suit site even by adverse possession since 1978?*
- 3. Whether the plaintiff is entitled for declaration as prayed for?*
- 4. To what relief?*

Additional issues:

- 1. Whether the plaintiff is entitled for the relief of mandatory*

injunction for removal of the construction made by D2 i.e. the mother of D-4 to D-8 as prayed for?

2. Whether the plaintiff is entitled for the relief of recovery of possession of the suit schedule property as prayed for?"

7. Before the trial Court, the plaintiff examined P.Ws.1 to 3 and marked Exs.A-1 to 4. The evidence of P.W.4 was eschewed. The defendants examined D.Ws.1 to 3 and marked Exs.B-1 to P-4.
8. By judgment dt.30-03-2012, the trial Court dismissed the suit. The trial Court perused Ex.A-1 sale deed under which the plaintiff is claiming right, title and interest in the plaint schedule property, and observed that plaintiff had purchased only Ac.0.10 1/3 cents from Seetharamaiah and in the schedule to Ex.A-1, it is mentioned that there is also a vacant site on the southern side belonging to Seetharamaiah and he would sell the same to plaintiff without consideration and till then plaintiff can enjoy the site. It recorded that Ex.A-1 does not disclose the measurements and boundaries mentioned for the site situated on the southern side of Ac.0.10 1/3 cents purchased by plaintiff under it and the recitals are ambiguous and do not convey any right to plaintiff in the said land. It also held that no measurements or boundaries were mentioned for the site permitted to be enjoyed by plaintiff by his vendor, and the plaintiff had not filed any document to show that he had acquired the site either from his vendor or legal heirs of his vendor subsequent to Ex.A-1. It also held that the plaint plan Ex.A-4 is contrary to his pleadings. It further held that while the plaintiff's contention is that the disputed site is in Sy.No.395/1, as per Ex.A-4 plan, the disputed site is not in Sy.No.395/1 and it must be part and parcel of Sy.No.394/2. It therefore held that there is no material on record to show that the

disputed site is part and parcel of Sy.No.395/1 since plaintiff did not take steps to establish the survey number of the disputed site.

9. It noted that plaintiff examined P.W.2, the son of late Seetharamaiah, but that witness also stated that he did not know what was the extent of the site that was promised by his father to plaintiff and there were no recitals in the sale deed which relate to the extent. P.W.3 also stated that Seetharamaiah did not sell the disputed land to plaintiff and did not speak about the extent or boundaries of the disputed site. It also considered the evidence of defendants and held that the disputed site is not in Sy.No.395/1 as alleged by plaintiff and is on the southern side of houses of defendants and was being used by defendants since 1st defendant had purchased property even prior to plaintiff in that area. It therefore held that the plaintiff is not entitled to the relief of declaration of title or for recovery of possession of the property. It also rejected the plea of adverse possession raised by plaintiff holding that the plaintiff failed to show his possession and enjoyment of the site since 1978. It held that the suit being one for declaration of title, burden is on the plaintiff to establish the identity of property claimed by him with boundaries and measurements and the plaintiff cannot take advantage of the weakness of the case of defendants. Consequently it also refused to grant the relief of mandatory injunction.
10. The plaintiff then filed A.S.No.35 of 2012 before the Judge, Family Court-cum-VI Additional District Judge, Kadapa.
11. By judgment and decree dt.24-04-2014, the said appeal was also dismissed confirming the findings of the trial Court.

12. Challenging the same, this appeal is filed.
13. The learned counsel for the appellant contended that 1st defendant had purchased only Ac.0.02 cents of land under Ex.A-3 but he has gifted and sold under Exs.A-2 and B-4 more than what he has purchased and since defendants are encroachers without any valid title to the land, the Courts below ought to have decreed the suit.
14. The plaintiff having filed the suit for declaration, burden is on plaintiff to show that he has title to the disputed site. Admittedly, in Ex.A-1 sale deed dt.07-10-1978 executed by Seetharamaiah in plaintiff's favour, title to the disputed site was not conveyed to plaintiff and plaintiff was only allowed to enjoy the same with a promise to alienate the same in future. Seetharamaiah admittedly died without executing any sale deed to plaintiff. Therefore, title to this disputed site was not conveyed by Seetharamaiah to plaintiff. Although the plea of adverse possession is raised by plaintiff, such claim of adverse possession could only be claimed against the original owner Seetharamaiah or his heirs, but recital in Ex.A-1 that plaintiff is permitted to enjoy the site till it is sold by Seetharamaiah to plaintiff would indicate that such possession can only be permissive possession. It is not adverse possession. No facts are pleaded as to how this permissive possession became adverse possession at a later point of time to the knowledge of Seetharamaiah and his family. In this view of the matter, the plaintiff cannot seek declaration of title because he neither purchased the property nor did he acquire title by adverse possession. Both Courts have therefore rightly held that plaintiff

is not entitled to relief of declaration of title. Since the relief of recovery of possession is sought by plaintiff on the basis of his claim to title, once his claim to title is negated, the relief of recovery of possession cannot be granted to him. Consequently, even mandatory injunction cannot be granted to him.

15. As regards his plea that defendants had been in occupation of more area than what 1st defendant had purchased is concerned, I am of the opinion that the burden is on plaintiff to succeed on the strength of his case, but he cannot bank on the weakness of defendants' case to succeed. As the suit is for declaration of title and recovery of possession, since the plaintiff has not been able to establish his prior possession of the disputed site, and the concurrent findings of the both Courts show that the disputed site is in Sy.No.394/2 and not in Sy.No.395/1 (in which the plaintiff had purchased Ac.0.10 1/3 cents from Seetharamaiah), I see no reason to interfere with the judgments and decrees of the Court below. I also hold that There is no substantial question of law arising for considering in this appeal.

16. Therefore, the Second Appeal dismissed at the stage of admission. No costs.

17. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17-04-2015

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