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THE HON'BLE SRI JUSTICE K.C. BHANU

SECOND APPEAL No.699 OF 2014

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JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is directed against the judgment and decree, dated 07.07.2014, in Appeal Suit No.17 of 2012 passed by the Senior Civil Judge, Mangalagiri, whereunder and whereby, the judgment and decree, dated 26.03.2012, in Original Suit No.178 of 2008 passed by the Principal Junior Civil Judge, Mangalagiri, were confirmed.

2. The appellant herein is the 1st defendant, and the respondent herein is the plaintiff in the Original Suit. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed before the trial Court.

3. The respondent/plaintiff filed the suit stating that she is absolute owner of the plaint schedule property having purchased the same from defendant No.2 under a registered sale deed, dated 04.12.2006; that the 1st defendant, without having any right, title or possession over the plaint schedule property, dispossessed her on 15.06.2007 highhandedly; that thereupon, on the same day, the plaintiff lodged a complaint before the Station House Officer, Mangalagiri Rural Police Station, but police did not take any action. Hence, the suit.

4. The 1st defendant filed written statement stating that the vendor of the plaintiff i.e., the 2nd defendant filed a suit vide Original Suit No.74 of 2004 on the file of the Principal Junior Civil Judge, Mangalagiri against him for permanent injunction and other reliefs; that the 1st defendant also filed written statement in that suit; that the 1st

defendant paid entire sale consideration, but he did not obtain regular sale deed; that since the date of agreement of sale, the 1st defendant has been in continuous possession and enjoyment of the plaint schedule property and hence, he prayed to dismiss the suit.

5. The 2nd defendant filed written statement stating that she is absolute owner of the plaint schedule property and the 1st defendant has no right, title and possession over the property and hence, she prayed to dismiss the suit against her.

6. On the basis of the above pleadings, the following issues were settled by the trial Court for trial:

“1. Whether the plaintiff is entitled for decree against the 1st defendant, directing the 1st defendant to hand over possession of the plaint schedule property to the plaintiff and if the 1st defendant fails to do so, the same may be handed over under due process of law and for costs or not?

2. Whether the plaintiff is entitled for future mesne profits over the plaint schedule from 1st defendant as prayed or not?

3. To what relief?”

7. During trial, on behalf of the plaintiff, PWs-1 and 2 were examined and Ex.A.1 to A.5 were got marked and on behalf of the defendants, DWs.1 to 3 were examined and Exs.B1 to B6 were got marked.

8. The trial Court, upon considering the evidence and material on record, held that the plaintiff is a title holder of the plaint schedule property and the 1st defendant, who is in possession and enjoyment of the property, has to vacate the same and accordingly,

partly decreed the suit directing the 1st defendant to handover the vacant possession of the plaint schedule property to the plaintiff within two (2) months' from the date of the said judgment. On appeal, the said judgment and decree were confirmed by the first appellate Court. Challenging the same, the present Second Appeal is filed.

9. In view of amendment to Section 100 CPC., filing of the second appeal is not automatic or routine. The appellant must show the substantial question of law involved so as to admit the same. A finding is said to be perverse, if it is not based upon admissible evidence on record, or inadmissible evidence or misconception of evidence or documents has been taken into consideration. To know whether the findings are correct, or not, it is necessary to refer to the evidence adduced by the parties.

10. The Second Appeal is sought to be admitted on the following suggested substantial questions of law:

“A. Whether the Suit filed without cause of action is maintainable.

B. Whether the Suit filed for only recovery of possession without seeking relief of declaration, when admittedly plaintiff knows that she is not in possession of the property right from the date of purchase of the property.

C. Whether the plaintiff who approached the court admittedly without having possession over the Suit Schedule Property even as on the date of filing of the Suit, by saying that she was disposed from the Suit Schedule property on 15.06.2004 and the same was found not correct on the evidence is entitled for any relief.”

11. The plaintiff's title relating to the plaint schedule property under Ex.A.1, dated 04.12.2006, is not in dispute. Originally the plaint schedule property belonged to one Eswaramma, who sold the same to one Cherukuri Seshamma and the said Seshamma, in turn, gifted the property to the 2nd defendant under Ex.A2- registered gift deed, dated

21.07.2003, and thereupon, the 2nd the defendant sold the said property to the plaintiff under an agreement of sale, dated 04.12.2006. Thereafter, mutation was done in the name of the plaintiff as per the proceedings issued by the Secretary, Gram Panchayat, Pedavadlapudi in terms of Ex.A.5, dated 16.01.2012. The evidence of P.Ws.1 and 2 coupled with recitals Exs.A.1 and A.2 would clearly go to show that the plaintiff has got absolute title over the plaint schedule property. But, after purchase of the property, the plaintiff was dispossessed by the 1st defendant on 15.06.2007. But, the trial Court has not accepted the said contention.

12. On the other hand, the case of the 1st defendant is that he has been in possession and enjoyment of the property since long time having purchased the same under an agreement of sale. But, as the said agreement of sale has not been transformed into a regular registered sale deed, he has no right or title in respect of the plaint schedule property.

13. With regard to the first substantial question of law, as seen from the plaint, the plaintiff purchased the plaint schedule property on 04.12.2006 under a registered sale deed and after purchase of the property, the 1st defendant highhandedly encroached the same on 15.06.2007. Thereupon, the plaintiff lodged a complaint to the police, but police did not take any action. Hence, she filed a suit for recovery of possession. Therefore, the suggested question of law cannot be said to be a substantial question of law. As seen from the plaint and the evidence of plaintiff show about the cause of action.

14. With regard to the second substantial question of law i.e., whether without seeking for declaration, suit for recovery of possession simplicitor is maintainable, since the 1st defendant has no right or title to the property, the plaintiff has to file a suit for recovery of possession only because her title to the property has not been denied or disputed. Therefore, the suggested question cannot be said to be a substantial

question of law.

15. The third substantial question of law is relating to the facts. The 1st defendant has been in possession and enjoyment of the property and it is clear from the documents i.e., Exs.B.5 and B.6 filed by him. Though he claims that he has been in continuous possession and enjoyment of property for about 17 years, except filing Exs.B.5 and B.6, no other documentary evidence is filed to substantiate his claim that he has been in continuous and uninterrupted possession of the property so as to acquire title by possession. Therefore, in the absence of any evidence, the 1st defendant cannot claim that he acquired title to the property by adverse possession.

16. Viewed from any angle, none of the findings of the courts below is shown to be perverse or contrary to law. The findings are based upon proper appreciation of evidence on record. The suggested substantial questions of law are not the real substantial questions of law so as to admit the Second Appeal. Therefore, there are no grounds to interfere with the impugned judgment.

17. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE K.C.BHANU

FEBRUARY 20, 2015

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THE HON'BLE SRI JUSTICE K.C.BHANU

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DATED: 20.02.2015

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