

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1310 of 2007

Date:21.01.2015

Between:

Chinni Subba Rao (Died)
C. Adilakshmi (Died)
Ch. Satyanarayana and others.

.....Appellants.

AND

A. Nagi Reddy

.....Respondent.

The Court made the following:

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1310 of 2007

JUDGMENT:

This appeal is preferred against judgment dated 04-10-2007 in A.S.No.90/2001 on the file of Senior Civil Judge, Bapatla whereunder judgment & decree dated 16-11-2001 in O.S.No.350/1999 on the file of I Additional Junior Civil Judge, Bapatla was confirmed.

2. Appellants herein are plaintiffs and respondent herein is

defendant and they are hereinafter referred to as plaintiffs and defendant for convenience sake.

3. Sole plaintiff-Ch. Subba Rao filed O.S.No.350/1999 seeking permanent injunction against defendant in respect of plaint schedule property and the trial Court, on a consideration of oral and documentary evidence produced on behalf of both parties, dismissed the suit holding that plaintiff failed to show that he was in possession and enjoyment of suit schedule property as on the date of the suit and aggrieved by the same, appeal is preferred and during pendency of the appeal, sole plaintiff died and the appellants herein were brought on record as legal representatives of the deceased- plaintiff and the appellate Court, on a reappraisal of oral and documentary evidence, dismissed the appeal confirming findings of the trial Court. Now aggrieved by the judgments of both the Courts, present appeal is preferred by the plaintiffs.

4. Heard both sides.

5. Advocate for appellants submitted that both the Courts mainly dismissed the suit on two grounds firstly; that deceased- Ch.Subba Rao was only an agreement holder and he has not enforced that agreement and secondly, the revenue records are not duly proved. He submitted that trial Court has not accepted the revenue records on the ground that concerned revenue officials are not examined and the findings of the trial Court is incorrect, because the revenue

documents being public documents have to be considered and there is no need for examination of concerned officials as there is no objection disputing the authenticity of the documents. He submitted that the deceased-plaintiff was put in possession of the property by virtue of agreement of sale and he has got every right to protect his possession and the suit being for injunction, trial Court ought to have granted injunction. He submitted that the appellate Court dismissed the appeal and its findings are contrary to the evidence.

6. On the other hand, Advocate for defendant submitted that plaintiff mainly relied on the certificate issued by V.R.O., with regard to possession, but such certificate cannot be accepted, because V.R.O., is not competent and only M.R.O., is competent to issue. He further submitted that when the defendant produced documents issued by M.R.O., the trial Court rightly discarded the certificate issued by V.R.O. He submitted that when the boundaries of plot schedule are not in conformity with the boundaries that are referred to in the agreement of sale and considering these aspects, the trial Court dismissed the suit and the appellate Court rightly confirmed the judgment of the trial Court and that there are no grounds to interfere with the concurrent findings. He submitted that all the grounds urged in the second appeal are in respect of factual aspects and no question of law is involved leave alone substantial question of law, as such, the appeal is liable to be dismissed.

7. This Court admitted the second appeal treating the grounds urged in the appeal as substantial question of law. The following are the grounds that are urged in the second appeal as substantial question of law:-

- “(a) Whether the Courts below erred in law in not considering Ex.A.22 to A.24, Adangals for Faslies 1401, 1403, 1404 and 1406 (1991, 1993, 1994 and 1996) which clearly show the possession of the plaintiff and his vendor of the plaint schedule property as on the date of the suit?”*
- (b) Whether the Courts below erred in law in going into the issue of title of the plaintiff's vendor when the suit filed was for bare injunction in which only possession on the date of filing of the suit is relevant?*
- (c) Whether the Courts below acted perversely in not relying on Exs.A.5 to A.26 to hold that the plaintiff was in possession of the plaint schedule property on the date of filing of the suit.*
- (d) Whether the Lower Appellate Court erred in law in merely relying on the findings of the Trial Court without independently considering the evidence on record.*
- (e) Whether the trial Court erred in law dismissing the plaintiffs' suit for injunction against the defendant on the ground that he had not filed a suit for specific performance against his vendors who had never interfered with his possession of the plaint schedule land unlike the defendant?*
- (f) Whether the Trial Court having held at Para 19 that the respondent/defendant*

failed to establish that he is in possession and enjoyment of the plaint schedule property acted perversely in ignoring Exs.A5 to Ex.A26 and refusing to decree the plaintiffs' suit for perpetual injunction?

8. Now the point that would arise for my consideration in this second appeal is whether there is any substantial question of law involved in the matter to be decided by this Court?

9. **Point:-** As already referred above, the suit is filed for permanent injunction. According to plaintiff, one Sanagapalli Subba Rao and his two sons Sitaramarao and Ranga Rao have got title over the suit schedule property and they gifted this property to their three sisters; Dhanalakshmi, Sesharatnam and Suseela towards Pasupukunkuma, but the property still remained with Sangapalli Subba Rao and he was cultivating the same on behalf of sisters and that he sold the same under an agreement of sale on 27-03-1981 to plaintiff. According to plaintiff, he paid an advance of Rs.1,000/- on 27-03-1981 and paid Rs.26,000/- on 01-07-1981 and Rs.2,308/- on

2-8-1981 and payment endorsements are made on the agreement and the property was delivered to him on the date of payment of last instalment i.e, on 2-8-1981. According to plaintiffs, all the three sisters ratified the action of their brother Subba Rao on 20-09-1981 and agreed to execute registered sale deed in favour of plaintiff or his

nominee. As many as five witnesses are examined on behalf of plaintiff besides marking 28 documents and on defendant side, three witnesses are examined and one document is marked. The main contention of the appellants is that both the Courts have not properly appreciated evidence and therefore, the findings of the trial Court and appellate Court have to be treated as perverse and in that way, the second appeal is maintainable.

10. But as seen from the material, learned trial Judge has elaborately discussed the entire evidence with reference to pleadings and submissions of both parties and held that there is no material to show that plaintiff was in possession of the suit property as on the date of the suit. As seen from the grounds, the appellants have urged as many as four grounds as substantial question of law and a bare reading of these grounds would show that none of them can be said as grounds relating to question of law. On the other hand, they are purely on the factual aspects.

11. Learned Advocate for appellants contended that defendant has not specifically denied each and every allegation in the plaint except giving a general denial and that is not sufficient. Learned counsel for appellants relied on a decision of this Court in **Sivashakti Transport vs. Uttamchand Kataria**^[1] and submitted that when there is no specific denial, the objection of the defendant cannot be considered. But the decision relied on by appellants' counsel

is not applicable to the facts of this case, because in our case, there are specific denials in the written statement and those denials were considered by the trial Court and appellate Court and now at this stage, such an objection cannot be entertained.

12. Advocate for appellants further contended that in a suit for injunction, possession over the suit schedule property as on the date of the filing of the suit has to be established and the title aspect need not be examined meticulously, but the trial Court and appellate Court mainly examined the title and the same is not correct.

In support of his argument, he relied on a decision of this Court in **Sadasivuni Manmadeswara Rao v. Patnana Laxmana Rao**, wherein this Court held in Para No.7 as follows:-

“In a suit for injunction, it is essential for a plaintiff to prove his possession over the plaint schedule property as on the date of filing of the suit. The scrutiny of the plea about the title would be only to satisfy the Court that the possession, even if established by the plaintiff is not that of an outright stranger or trespasser that he holds a semblance of right vis-a-vis the property”

13. There is no dispute with regard to the legal proposition that plaintiff has to prove possession as on the date of the suit. In a suit for injunction, plaintiff must show that he has legal right over the property and possession thereon and to protect his legal right he can seek for injunction. Here the trial Court and appellate Court, on appreciation of oral and documentary evidence, held that plaintiff failed to show that

he was in possession of the suit property as on the date of the suit and on that ground refused to grant injunction. When both the Courts concurrently held that plaintiff failed to prove his possession of the suit schedule property as on the date of the suit, such concurrent findings cannot be disturbed unless there is strong material to show that those findings are contrary to the material on record. One of the contentions of the appellants is that those findings are contrary to the material on record, but on a verification of the evidence, I am unable to accept the submission of the learned counsel for the appellants, because except the self serving testimony of plaintiff, there is no material to show that plaintiff was in possession and enjoyment of the suit property as on the date of the suit or any time prior to filing of the suit. Further, as seen from the material, the boundaries referred in the agreement of sale on the basis of which, plaintiff claims a legal right over the suit property are different with the boundaries of the suit property. This aspect was also considered by the trial Court and after elaborate discussion by comparing the recitals of the agreement with the plaintiff's averments with reference to the evidence on record, a clear finding is given that plaintiff failed to connect that the suit property is the same property that was purchased under agreement of sale and holding so disbelieved the version of the plaintiff. I do not find any wrong appreciation of evidence either by the trial Court or by the appellate Court. In fact, trial Judge has meticulously examined each and every aspect and rightly concluded that plaintiff failed to prove possession

over the schedule property. Therefore, the contention of the appellants that findings of the trial Court and appellate Court are contrary to the material on record cannot be accepted. Both trial Court and appellate Court came to a right conclusion and rightly appreciated evidence on record and there are absolutely no grounds to interfere with such concurrent findings. As already observed above, all the grounds are in respect of factual aspects and when the findings of the Courts below are based on sound principles with convincing reasons such findings cannot be interfered in a second appeal.

14. On a scrutiny of the entire evidence on record and material, I am of the view that there is no question of law involved leave alone substantial question of law and the second appeal is liable to be dismissed as devoid of merits.

15. Accordingly, appeal is dismissed as devoid of merits with costs.

16. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:21.01.2015

mr**b**

[\[1\]](#) 2013 (6) ALD (DB)