

THE HON'BLE SRI JUSTICE A.V. SESA SAI

SECOND APPEAL No.309 OF 2012

JUDGMENT:

This Second Appeal is directed against the judgment and decree, dated 11-02-2011 passed by the Court of the II Addl. District Judge, Karimnagar at Jagtial in A.S.No.36 of 2010, confirming the judgment and decree, dated 31-05-2010 passed by the Court of the Prl. Junior Civil Judge, Jagtial in O.S.No.117 of 2003.

Heard Sri E. Venkata Reddy, learned counsel for the appellant and Sri G. Madhusudan Reddy, learned counsel for the respondents apart from perusing the material available before the Court.

Plaintiff in the above said suit is the appellant in the present Second Appeal preferred under Section 100 of the Code of Civil Procedure. This Second Appeal arises in the manner indicated infra:

Appellant herein instituted O.S.No.117 of 2003 on the file of the Court of the Prl. Junior Civil Judge at Jagtial against the respondents herein for perpetual injunction in respect of the plaint schedule property, consisting of five items namely Sy.No.267/ admeasuring Ac.0-13 gts., Sy.No.267/ admeasuring Ac.0-12½ gts., Sy.No.268/ admeasuring Ac.0-14 gts., Sy.No.267/ admeasuring Ac.0-25 gts., and Sy.No.268/ admeasuring Ac.0-

13 gts. The said lands are situated at Thakkallapalli village of Mallial mandal, Karimnagar District.

Defendants filed written statement, denying the averments in the plaint presented by the appellant herein. The learned Prl. Junior Civil Judge, Jagtial basing on the pleadings framed the following issues for trial:

1. *Whether the plaintiff is entitled for perpetual injunction in respect of the plaint schedule property as prayed for?*
2. *To what relief?*

During the course of trial, the plaintiff (appellant herein) examined himself as PW1 apart from examining PWs.2 to 5 on his behalf and marked Exs.A1 to A21. On the other hand, defendant No.3 examined himself as DW1 and the defendants also examined DWs.2 to 4 on their behalf and marked Exs.B1 to B8.

The learned Prl. Junior Civil Judge, Jagtial by way of judgment and decree, dated 31-05-2010 partly allowed the suit, granting decree for perpetual injunction in favour of the plaintiff and against the defendants to the extent of first three items and dismissed the suit for the rest of the items namely Sy.No.267/ admeasuring Ac.0-25 gts., and Sy.No.268/ - admeasuring Ac.0-13 gts. To the extent of the said items in respect of which the trial Court refused to decree the suit, the plaintiff preferred A.S.No.36 of 2010 on the file of the Court of the II Addl. District Judge, Karimnagar at Jagtial. The learned District Judge, by way of judgment and decree, dated

11-02-2011 dismissed the said appeal suit, confirming the judgment and decree rendered by the trial Court.

Calling in question the validity and legal acceptability of the said judgments and decrees rendered by the learned trial Judge and the lower appellate Judge the instant Second Appeal has been filed.

The above information manifestly shows that the claim of the appellant herein in the present appeal is limited only to the extent of the land in Sy.No.267/ admeasuring Ac.0-25 gts., and Sy.No.268/ admeasuring Ac.0-13 gts., situated at Thakkallapalli village of Mallial mandal, Karimnagar District.

According to the plaintiff, he purchased the said properties from one Sri Bhoosarapu Kistaiah – PW2 by way of Ex.A2 registered sale deed bearing document No.1202/1999, dated 03-07-1999. It is the further case of the plaintiff/ appellant herein that the documents filed by him especially Exs.A5, A7 and A-18 coupled with the evidence of PW5 – Tahsildar, clinchingly demonstrate his possession in respect of the subject properties.

On the other hand, it is the case of the defendants that PW2 i.e., Bhoosarapu Kistaiah from whom the plaintiff claims the properties had no title in respect of the lands in Sy.Nos.267/ and Sy.No.268/ . It is also pleaded by the defendants that late Bhoosarapu Venkati was the maternal grand

father for the second and third defendants and he had a son by name Bhoosarapu Pedda Saya goud and five daughters namely Ellavva, Papavva, Peddakka, Lachavva and Mallu and the said Venkati took one Balasani Laxmi Rajam as illatum and gave Mallu in marriage to him and the said Venkati gave Ac.0-25 gts., in Sy.No.267/ and

Ac.0-13 gts., in Sy.No.268/ to his daughter Mallu towards her PASUPU KUMKUMA at the time of marriage and the lands are mutated in her favour in revenue records by mentioning her name as Bhoosarapu Mallu. It is also the case of the defendants that the father of defendants 2 and 3 died in the year 1992, leaving behind his wife Bhoosarapu @ Balasani Mallu and his two sons i.e., defendant Nos.2 and 3 and defendant No.1 is the son of defendant No.3. After the death of Balasani Mallu defendant No.2 and 3 succeeded to the lands and have been in possession and enjoyment of the lands and it is also pleaded that Sri Bhoosarapu Kistaiah at no point of time was in possession of the lands and he had neither title nor possession over the lands, as such he had no right also to sell the same to the plaintiff.

Taking into consideration of the oral and documentary evidence available on record, the learned trial Judge dismissed the suit to the extent of the properties in Sy.Nos.267/ and Sy.No.268/ . The lower Appellate Court also confirmed the said findings.

It is needless to observe that under Section 100 of the Code of Civil Procedure, Second Appeal lies to the High Court only on

substantial questions of law. According to the appellant substantial question of law is the non-consideration of Ex.A5 pahani for the year 2002-2003 coupled with the evidence of PW5 and Exs.A2, A4, A17 and A-18 coupled with the other evidence on record from proper perspective.

In order to appreciate the same, it would be appropriate to refer to the findings of the trial Court as well as the lower Appellate Court in the impugned judgments.

The learned Prl. Junior Civil Judge at paragraph No.11 of the judgment, in clear and categoric terms, discussed about the right of PW2 to sell the property and the right of the plaintiff to purchase the same. The learned trial Judge also recorded a finding that nowhere in the revenue records prior to Ex.A2, PW2 was shown as pattedar and possessor of the disputed land and on the other hand found that Bhoosarapu Mallu was shown as pattedar and possessor of the land. The learned Judge came to such a conclusion after taking into consideration Exs.A6 to A8 and Ex.B3 certified copies of the pahanies for the years 1993-1994 to 1997-1998. The learned trial Judge also recorded valid and convincing findings at paragraph No.14 on Ex.A17 pattedar passbook and discarded the same also. On Ex.A18, at paragraph No.16 of the judgment the learned trial Judge categorically found that mutation entries in the revenue records would not decide the title of the person and the same needs to be decided by the competent Civil Court. Eventually, after meticulously and thoroughly considering the evidence on record, the learned Prl. Junior Civil Judge categorically found that the vendor of the plaintiff namely

Bhoosarapu Kistaiah (PW2) has no title over the disputed lands and the learned trial Judge also discarded Ex.A5 while assigning a valid reason at paragraph No.17 of the judgment.

Coming to the judgment rendered by the lower appellate Court, the learned Addl. District Judge at paragraph Nos.17 and 18 of the judgment gave finding with regard to the evidence of PW2. The learned appellate Judge also considered the evidentiary value of Ex.A8 at paragraph No.19 and held that the same cannot be looked into while observing that it is settled law that entries in revenue records neither confer nor extinguish title over the property. The learned appellate Judge at paragraph No.21 of the judgment considered other documents also. The learned Addl. District Judge assigned the reasons for refusing to place reliance on Ex.A5 pahani at paragraph No.21. Therefore, in the considered opinion of this Court the said findings are valid and cannot be disturbed. The learned Judge also answered the contention with regard to the impact of Section 43 of the Transfer of Property Act at paragraph No.24.

In the considered opinion of this Court, by any stretch of imagination, the said findings recorded by the trial Court as well as the lower Appellate Court with cogent and convincing reasons cannot be disturbed by this Court under Section 100 of the Code of Civil Procedure. It is settled and well-established proposition of law that unless the findings of the Courts below are patently perverse, fundamentally erroneous and in utter discard of the basic principles of law, the invocation of jurisdiction of this Court

under Section 100 of the Code of Civil Procedure is impermissible. In the considered opinion of this Court there are no questions of law much less substantial questions of law in the present Second Appeal.

For the aforesaid reasons and having regard to the well-reasoned and well crafted judgments of the Courts below, the Second Appeal is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

A.V. SETHA SAI, J

March 20, 2015

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THE HON'BLE SRI JUSTICE A.V. SETHA SAI

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