

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.74 of 2014
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JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful plaintiff is directed against the decree and judgment dated 19.07.2013 of the learned Principal District Judge, Karimnagar passed in AS.No.41 of 2012. The learned Principal District Judge while dismissing the said appeal had confirmed the decree and judgment dated 28.06.2012 of the learned Senior Civil Judge, Karimnagar passed in OS.No.100 of 2002.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondents/defendants ('the defendants', for brevity). I have perused the material record.

3. Though number of questions are raised as substantial questions in the memorandum of grounds of appeal the learned counsel for the defendant would contend that the following substantial questions of law are only involved and, therefore, the appeal deserves admission and disposal on merits.

1. Whether the first appellate Court has justified in believing the expert opinion report as well as evidence of the DW3 who categorically stated in his cross examination that the smudged thumb impression covered under D1 to D4 and D7 when D1 to D4 and D7 are unfit for comparison and he cannot say whether they are identical and similar with that of S1 and S2. In the said circumstances findings of lower appellate court as well as trial court in respect of Ex.A1 and Ex.A2 to A4 only on the basis of incomplete opinion, is valid in the eye of law.

2. Whether the lower appellate Court and trial Court can disbelieve the earlier expert opinion given in CC.No.330 of 2000 on Ex.A1 in which it was stated that Ex.A1 is wanting in

clear ridge characteristics required for the purpose of establishing identity, hence the disputed thumb impressions marked 'Q' is unfit for comparisons. In the existing of two (02) contrary expert opinion in respect of the same document i.e., Ex.A1 coming to conclusion that Ex.A1 was not executed by D1 as there is a strain relations between the parties on the date of execution, is contrary to law.

3. Whether the findings of the lower appellate court as well as trial court regarding, whether the counter claim by way of written statement in the suit filed by the plaintiff is barred by limitation is valid in the eye of law.

4. Whether the first appellate Court has examined the finger print expert opinion as well evidence of the DW3 by comparing the expert opinion given in CC.No.330 of 2000 on Ex.A1.

5. Whether the first appellate Court rightly discussed the provisions of Indian limitation Act in claiming the counter claim which was sought admittedly barred by limitation and as such the findings of the lower appellate court as well as trial court in respect of the counter claim by ignoring the mandatory limitation period is valid in the eye of law.

[Reproduced verbatim]

4. On the other hand, the learned counsel for the respondents/defendants having supported the concurrent findings in the judgments of the courts below had stated that none of the questions raised are pure questions of law and that the questions raised are only a blend of fact and law and that no substantial questions of law are involved and that there is no necessity to interfere with the decrees and judgments of the courts below which are rendered after recording concurrent findings supported by cogent and valid reasons. He had urged that the appeal is liable for dismissal at the stage of admission as not even pure questions of law are involved.

5. Now, this court has to examine as to whether or not any substantial questions of law are involved in this second appeal and whether the second appeal deserves admission for disposal on merits or is liable to be dismissed at the stage of admission.

6. The facts which are necessary for consideration, in brief, are as follows:

The plaintiff had brought a suit against the defendants for declaration of title and recovery of possession based on registered sale deed dated 01.10.1994 under exhibit A1 said to have been executed by the 1st defendant who is his own mother-in-law being the mother of his divorced wife who is the second defendant. The 3rd defendant is the husband of the 2nd defendant whom she had married after her divorce with the plaintiff herein. The suit schedule property is landed property in an extent of Ac.2.05 guntas in Sy.No.179/B, Ac.1.14 guntas in Sy.No.180, 181-A and Ac.1.15 guntas in Sy.No.275/A situate at Bhoopalapatnam more fully described in the schedule annexed to the plaint. In the suit the relief of recovery of possession was also sought while seeking declaration that the gift deeds dated 30.05.2002 vide document nos.596/02 and 597/02 pertaining to the suit schedule property standing in the names of the defendants 2 and 3 are null and void and do not bind the plaintiff. The defendants while resisting the suit by contending that the sale deed in favour of the plaintiff under exhibit A1 was obtained by impersonating the 1st defendant and that the 1st defendant did not execute the sale deed and that the said document is a forged document and is not supported by consideration had *inter alia* raised a counter claim contending that in the circumstances stated exhibit A1 sale deed is liable for cancellation. Taking into consideration the pleadings of parties, the trial Court had framed the following issues.

1. Whether the plaintiff has purchased the suit land under registered sale deed dated 01.10.1994?

2. Whether the plaintiff is entitled for declaration of title over the suit schedule land?

3. Whether the possession of the land was delivered to the plaintiff?

4. Whether the plaintiff is entitled to seek for cancellation of gift deeds in favour of D2 and D3 dated 30.5.2002 by declaring them as null and void?

5. Whether the plaintiff is entitled to recover the possession of suit land from defendants?

6. Whether the sale deed dated 10.01.1994 in favour of the plaintiff is not executed by D1 and it is liable to be cancelled?

7. Whether the counter claim is barred by limitation?

8. To what relief?

At trial, the plaintiff and his supporting witnesses were examined as PWs1 to 3 and exhibits A1 to A12 were marked. The first defendant and her supporting witnesses were examined as DWs1 to 4 and exhibits B1 to B11 were marked. Exhibits C1 to C3 were also marked. On merits, the trial court had dismissed the suit of the plaintiff and decreed the counter claim of the defendants. Admittedly, the plaintiff had preferred an appeal only assailing the decree of the trial Court insofar as the dismissal of his suit but did not prefer a first appeal assailing the decree granted in favour of the defendants allowing the counter claim. The first appeal preferred by the plaintiff, as already noted, is dismissed by the Court below. Hence, the plaintiff is before this Court.

7. I have given earnest consideration to the submissions made by the learned counsel for the plaintiff, which are as follows:

The Courts below were in error in coming to the conclusion that exhibit A1 is an invalid document basing on the oral and documentary evidence on the side of the defendants ignoring the material evidence on the side of the plaintiff. The Courts below failed to examine the expert opinion which was furnished in a calendar case no.330 of 2000 which was earlier pending between the parties and that in that case the plaintiff was acquitted on the sole ground that the expert opinion is not favourable to the defendants herein. The document obtained by the plaintiff is a registered document. Though there were disputes between the parties, in view of the fact that it is a registered document it has got probative value and is valid in the eye of law and, therefore, the decrees and judgments passed by the Courts below are erroneous and are liable to be set aside.

8. The learned counsel for the defendants while supporting the concurrent findings in the judgments of the Courts below had *inter alia* contended that the Courts below having considered the facts accurately and the evidence in the right perspective had recorded concurrent findings of fact and that the said findings are supported by cogent and valid reasons and that no grounds

are made out calling for interference with the said findings and that no substantial questions of law are involved in the appeal and that the second appeal is devoid of merit. He would further contend that a first appeal was preferred by the unsuccessful plaintiff assailing the decree and judgment dismissing his suit, but admittedly, no first appeal was preferred by the plaintiff though the counter claim of the defendants was decreed in their favour and against the plaintiff. Therefore, this second appeal is liable to be dismissed in view of the principle enshrined in the doctrine of res judicata as the decree decreeing the counter claim of the defendants has become final and operates as estoppel by record.

9. As rightly contended by the learned counsel for the defendants, the present second appeal is liable to be dismissed on the sole ground that the second appeal is barred by the principle enshrined in the doctrine of res judicata. Admittedly, the trial Court while dismissing the suit of the plaintiff/appellant herein had decreed the counter claim of the defendants and granted a decree cancelling exhibit A1-registered sale deed. The plaintiff ought to have preferred a first appeal against the decree granting the counter claim in favour of the defendants, but he did not do so. He had remained satisfied by preferring an appeal against the decree dismissing his suit. Be that as it may, the first appeal suit of the plaintiff was dismissed confirming the findings of fact recorded by the trial Court. Having gone through the material record, this Court is satisfied that the Court below is justified in dismissing the first appeal of the plaintiff more particularly when the appeal is barred by res judicata. None of the questions raised are pure questions of law let alone substantial questions of law. No valid grounds are made out calling for interference with the concurrent findings of the courts below insofar as the decree dismissing the suit of the plaintiff.

10. Viewed thus, this Court finds that there is no substance in the substantial questions of law raised and that no substantial questions of law are involved in this second appeal and that therefore, there is no merit in the second appeal and that the second appeal is liable for dismissal at the admission stage being devoid of merit. The law is well settled that a second

appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. In the case on hand, as this Court finds that no substantial questions of law are involved, this second appeal is liable for dismissal at the stage of admission in view of the settled legal position and in view of the narrow compass of Section 100 of the Code. Accordingly this Court finds that no case is made out for admitting the second appeal.

11. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

6th October, 2015
Vjl