

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**SECOND APPEAL No.1127 of 1999**

**JUDGMENT:**

Aggrieved by the judgment and decree dated 20.09.1999 in A.S. No.133 of 1997 on the file of the Principal District Judge, Ranga Reddy District (for short, 'lower appellate court'), whereby and whereunder, the lower appellate court dismissed the appeal suit, confirming the judgment dated 26.11.1997 in O.S. No.281 of 1992 on the file of the Principal District Munsif, Hyderabad West and South, Ranga Reddy District (for short, 'trial court') decreeing the suit filed for permanent injunction restraining the appellant-defendant and his men from interfering with the respondent-plaintiff's right, title or interest over the plaint schedule property, the instant Second Appeal is preferred.

2. Appellant herein, who is also the appellant before the lower appellate court, is the defendant in the original suit before the trial court, while the respondent, who is also the respondent before the lower appellate court, is the plaintiff.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the trial court in the original suit.

4. The facts in brief are that the plaintiff filed the

suit seeking perpetual injunction concerning the suit schedule property, which consists of plot No.95 in an extent of 180 square yards in Sy.No.60 tracing her source of title to the purchase made by her under a registered sale deed executed by one P.S.Mallesha as general power of attorney holder of the original owner, E.Ramaiah, who owned and possessed a total extent of Acs.12-28 gts. situated at Guttalabegumpet village, Serilingampalli Mandal, Ranga Reddy District, having got divided the same into house site plots, and one such plot was the suit schedule property. It is her case that her husband constructed a wall around plot No.95 and later, when her husband went to Vijayawada on his personal work, taking advantage of his absence, the defendant constructed a compound wall and also raised a room in plot No.94 and kept a maid-servant and that that has been done only with an intention to knock away their plot, which is the subject matter herein, and, therefore, sought to grant perpetual injunction claiming that she has been in possession and enjoyment of the plot right from the date of purchase.

5. On the other hand, the case of the defendant has been that the plaintiff has no right to claim title or possession over the suit land, as he himself purchased plot Nos.94 and 95 in the month of May, 1998, having paid Rs.34,000/- to the original owner, E.Ramaiah under an agreement and, in fact, the entire extent was divided into three blocks categorising them as blocks – A, B and

C basing on the extent of each plot of each category of 400, 300 and 200 square yards, respectively. Thus, the defendant sets up the agreement of sale dated 05.05.1998 for alleged purchase of the suit plot at the rate of Rs.85/- per square yard, and according to him, even the possession of both plots was delivered to him and he has constructed a compound wall in between two plots in the year 1989 and has been paying municipal tax with house No.2-67. Claiming protection under Section 53A of the Transfer of Property Act, 1882 and also that by the time he intended to take registered sale deed, his vendor, E.Ramaiah died and, therefore, he paid Rs.2,000/- to the son of his vendor as the son of the vendor demanded further amount to execute a sale deed, but a receipt was obtained evidencing the payment of Rs.2,000/- and further claiming that the sale deed in favour of the plaintiff was not genuine document and he is a *bona fide* purchaser, sought to dismiss the suit with exemplary costs.

6. The trial court framed a comprehensive issue thus, 'whether the plaintiff is entitled permanent injunction as prayed for', and the ancillary issue 'to what relief'.

7. To resolve the dispute between the parties before the trial court, the husband of the plaintiff examined himself as P.W.1 by name Y.Venkateswara Rao and marked Ex.A.1-registered sale deed dated 16.09.1989. The defendant has stepped into the box and examined in

part as D.W.1. But as seen from the material on record, he did not complete his chief-examination and subjected himself for cross-examination, but however, Exs.B.1 to B.5 were marked, which are demand notice and tax receipts.

8. The trial court on appraisal of evidence, both, oral and documentary, let in by both sides, recorded a definite finding that the plaintiff proved his possession and thereby, granted relief. The lower appellate court affirmed the judgment and decree of the trial court observing that the defendant, in fact, did not chose to cross-examine P.W.1 and, thus, the evidence of P.W.1 remained unchallenged, and, on the other hand, the defendant did not complete his chief-examination as D.W.1 and rejecting the submission of the learned counsel for the defendant that the answer given by P.W.1 would amount to admission, dismissed the appeal.

9. It is the aforesaid judgment and decree, which are under challenge in the instant second appeal contending in the grounds of appeal that the courts below did not properly appreciate the evidence on record and despite the fact that except Ex.A.1, nothing else was submitted to prove the possession as against the tax receipts filed by him (defendant) evidencing his possession over the subject matter, still, decreed the suit and affirmed by the lower appellate court. It is also stated that non-cross-examination of P.W.1 is not the basis for

decreeing the suit and even I.A. No.440 of 1998 filed under Order XLI, Rule 27 CPC was also dismissed on 19.02.1998 for the reasons best known. It is also stated that no question of law was formulated in the grounds of appeal to maintain the second appeal. The appellant-defendant also referred to certain corrections in the plaint and placing reliance on the decision in **Balraj Taneja and another Vs. Sunil Madan and another**<sup>[1]</sup> mentions that where the disputed questions of fact disclosed in the plaint itself, it is not safe for the Court to pass judgment without requiring the plaintiff to prove the said facts. Therefore, sought to set aside the judgments and decrees of both the courts below.

10. Heard Smt. S. Hemalatha, learned counsel for the appellant-defendant, and Sri B. Ravisankar, learned counsel for the respondent-plaintiff.

11. The learned counsel for the appellant-defendant would contend that mere fact that the plaintiff was not cross-examined and the defendant did not subject himself to cross-examination by the plaintiff is not a ground to decree the suit. It is his submission that the plaintiff herself did not step into the witness box, and, on the other hand, her husband was examined as P.W.1 and, therefore, adverse inference has to be drawn under Section 114 of the Indian Evidence Act, 1872, in regard to which, placed reliance on the decision of the Hon'ble

Supreme Court in **Vidhyadhar Vs. Mankikrao and another**<sup>[2]</sup>. As to the non-examination of plaintiff herself as a witness would not satisfy the requirements of Order 3 Rules 1 and 2 CPC, reliance was placed on another decision of the Hon'ble Supreme Court in **Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd., and others**<sup>[3]</sup>.

12. Learned counsel for the respondent-plaintiff, on the other hand, would submit that the defendant having raised plea of fabrication of Ex.A.1-registered sale deed executed in favour of the plaintiff by the general power of attorney holder of original owner and not subjecting himself for cross-examination is sufficient enough to strike off the defence and grant decree, and in that view of the matter, the decisions relied on by the learned counsel for the appellant-defendant would render any assistance, more particularly, when the husband of the plaintiff is examined as P.W.1 and marked the sale deed as Ex.A.1. It is his submission that it is not a case where the general power of attorney holder is stepping into the box, but it is the husband of the plaintiff who was examined as P.W.1 and further the evidence of P.W.1 stood unchallenged for the reason that P.W.1 was not cross-examined at all. He, therefore, would submit that the finding recorded by the trial court and affirmed by the first appellate court do not suffer from any legal infirmity and, in fact, no substantial

question of law at all would arise and since the courts below rendered concurrent judgments, the instant second appeal is not maintainable at all.

13. Perused the judgment of both the courts below and oral and documentary evidence.

14. This Court while admitting the second appeal on 13-12-1999, having heard the learned counsel for the appellant-defendant, formulated the question of law thus:

"The substantial question of law that is raised is whether, without framing points for consideration as required under Order 41 Rule 31 CPC, the judgment of the court below is valid or not ?"

15. During the course of arguments, the learned counsel for the appellant-defendant has not requested the Court to frame any substantial questions of law. Thus, it is clear that only substantial question of law formulated in the instant second appeal which is required to be examined in the instant second appeal is the one formulated on 13-12-1999.

16. Keeping in view, the substantial question of law aforementioned, when the judgment of the lower appellate court is perused, in paragraph No.5, the lower appellate court has clearly formulated the point for consideration thus:

"Whether the respondent/plaintiff is entitled to

perpetual injunction restraining the petitioner/defendant from interfering with her peaceful possession and enjoyment in respect of suit schedule property."

17. In a suit for injunction, when the lower appellate court was assessing the judgment under challenge as to whether the finding recorded and the conclusion arrived at would suffer from any legal infirmity would invariably formulate a point with regard to entitlement of the plaintiff for perpetual injunction and no other issues or points would arise for consideration and the sole point formulated for consideration is a comprehensive one, and, therefore, it cannot be said that the lower appellate court has not complied with the provisions of Order XLI, Rule 31 CPC. Even such a plea is not raised in the grounds of appeal nor did the appellant-defendant assist the Court in pointing out what should be the points that ought to have been formulated by the lower appellate court has failed to formulate. In the absence of the same, it is really strange to contend that the lower appellate court did not formulate the point or issue for consideration in the first appeal.

18. When concurrent findings are recorded by both the courts below, there is absolutely no necessity to enter into the arena of factual aspects while disposing of the second appeal. However, even proceeding further

looking into the fact-situation, it is needless to mention that the plaintiff has got a registered sale deed in her favour and examination of her husband as P.W.1 in her place and her non-examination would not account for any infraction of Order 3 Rule 1 CPC. It is not a case where the general power of attorney holder is being examined by the plaintiff to apply the decision in **Janki Vashdeo Bhojwani's** case (supra 3) relied on by the learned counsel for the appellant-defendant. Even the decision in **Vidhyadhar's** case (supra 2) would not render any assistance to the appellant for the reason, despite taking a specific plea that the sale deed Ex.A.1 is a fabricated document, the defendant did not subject himself for cross-examination, and on the other hand, the defendant has not got cross-examined the plaintiff at least touching that allegation. When

a serious allegation of fabrication is levelled, touching the very sale deed under which both proprietary and possessory titles have been passed, mere allegation without any proof by way of cross-examination of opposite party or subjecting himself for cross-examination by the opposite party is of any consequence as the very plea remains as a plea only without there being any proof. Therefore, the concurrent judgments rendered by the Courts below and the decrees passed do not suffer from any perversity.

19. The instant Second Appeal is, therefore,

dismissed. There shall be no order as to costs.

20. As a sequel thereto, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

---

**A. SHANKAR NARAYANA, J**

1<sup>st</sup> October, 2015.

siva

---

[\[1\]](#) 1999 (6) ALD 21 (SC)

[\[2\]](#) AIR 1999 SC 1441 (1)

[\[3\]](#) AIR 2005 SC 439