

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.363 of 2015

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JUDGMENT:

This appeal is preferred challenging judgment and decree dated 10.09.2014 in A.S.No.39 of 2013 (old A.S.No.2 of 2013) on the file of VIII Additional District & Sessions Judge, Medak, whereunder, judgment and decree in O.S.No.50 of 2006 dated 21.01.2013 on the file of Junior Civil Judge, Narsapur, is confirmed.

2. Appellant herein is unsuccessful plaintiff in both the Courts. He filed above referred O.S.No.50 of 2006 for perpetual injunction restraining the defendants and their men from interfering with peaceful possession and enjoyment of Agricultural land in an extent of Ac.0-38 ½ guntas in Sy.No.325/OU situated at Kasala Village, Hathnoora Mandal, Medak district. The trial Court on consideration of evidence of PWs.1 and 2 and documents Exs.A-1 to A-17 on plaintiff's side and evidence of DWs.1 and 2 and documents Exs.B-1 to B-38 on defendants' side observed that plaintiff has failed to establish his claim for injunction over the suit schedule property and dismissed the suit. The appellate Court confirmed the said decree on a reappraisal of oral and documentary evidence. Aggrieved by the concurrent findings of the appellate Court, present appeal is preferred contending that the following are the substantial questions of law that are involved for determination by this Court:

- A. *Whether the Courts below are right in dismissing the Suit while considering that the plaintiff is the Pattadar & Possessor as per Ex.B.21 and also as per the evidence of DW.1 who sold the entire land by obtaining Lay-Out in the year 1989?*
- B. *Whether both the Courts below are right in considering the Revenue Records showing that Defendants are in possession as Pattedars & Possessors in spite of their admission that the entire land was divided into House Plots in the year 1989 and sold to various third parties and continued their names in the Revenue Records as Pattadras & Possessors?*
- C. *Whether the Courts below are right in considering as per the version of the*

Defendants that the land is no more Agricultural Lands and continued their names in the Revenue Records as Pattadars & Possessors under R.O.R. Act?

- D. *Whether the Courts below are right in not considering the documentary and oral evidence on record which was available? And this Hon'ble Court is proper and competent to adjudicate and reconsider the evidence as per Section 103 of C.P.C.*
- E. *Whether the Courts below are right in not taking into consideration the entries made in the Revenue Records as binding on the parties as per Section 6 (5) of R.O.R. Act. Unless contrary is proved as per Section 8 (2) of R.O.R. Act on the disputed entries and in the absence of the same, the entries are presumed to be true and binding on the parties?*
- F. *Other Substantial Questions of Law, if any, will be urged during the course of hearing.*

3. Heard advocate for appellant.

4. Advocate for appellant submitted that both the Courts have not taken into consideration the entries in revenue records, which are binding on the parties, as per Section 6(5) of R.O.R. Act. He submitted as per Section 8(2) of R.O.R. Act unless contrary is proved the entries are presumed to be true and binding on the parties. He submitted that plaintiff has produced Pahanis in respect of suit land but both the Courts doubted those Pahanis without any proper material and without considering the presumption under law, and not considering those documents is a grave error which is the substantial question of law involved in the present appeal.

5. As seen from the judgments of the Courts below, the Pahanis referred to above by the learned counsel for the appellant are for the year subsequent to the suit. In a suit for injunction, the plaintiff is expected to prove his possession as on the date of suit and prior to that and any documents subsequent to the suit showing possession cannot be relied on without first establishing possession of the plaintiff as on the date of suit or prior to the date of the suit.

6. As seen from the material, there is even discrepancy with regard to the Survey number and considering these aspects both the Courts have discarded those Pahanis and those findings are only on factual aspects and they cannot be treated as any findings of law. The other grounds referred to as substantial questions of law are all in respect of appreciation of oral and documentary

evidence touching the factual aspects and that there is absolutely no question of law involved to be determined by this Court leave alone substantial question of law. Therefore, I am of the view that there are no grounds to admit the Second Appeal.

7. For these reasons, the Second Appeal is devoid of merits and accordingly the same is dismissed. No costs.

8. Learned counsel for the appellant submitted that plaintiff may be given liberty to file a comprehensive suit seeking declaration of title. No leave is required to enforce legal right provided claim is within time. Therefore, it is made clear that appellant can enforce his legal right if it is not barred by time.

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

S. RAVI KUMAR, J

Date: 31-07-2015.

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