

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

SECOND APPEAL No.479 of 2015

JUDGMENT:

Heard.

First defendant in O.S.No.914 of 2004 on the file of the Court of Prl. Junior Civil Judge, Ongole is the appellant in the present Second Appeal preferred under Section 100 of the Code of Civil Procedure.

This Second Appeal is directed against the judgment and decree, dated 27-04-2011 passed by the Court of the III Addl. District Judge (Fast Track Court), Ongole in A.S.No.78 of 2008, confirming the judgment and decree, dated 19-02-2008 passed by the Court of the Prl. Junior Civil Judge, Ongole in O.S.No.914 of 2004.

The first respondent herein instituted the said suit against the appellant and the second respondent herein for permanent injunction to restrain the defendants and their men from interfering with their peaceful possession and enjoyment of the suit schedule property. The defendants 1 and 2 who are the appellant and second respondent herein respectively filed two separate written statements, denying the averments made in the plaint. The learned Prl. Junior Civil Judge, Ongole on 19-02-2008 decreed the said suit granting permanent injunction against the defendants, restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiffs.

As against the said judgment and decree, dated 19-02-2008 in O.S.No.914 of 2004 the first defendant/appellant herein

preferred A.S.No.78 of 2008 on the file of the Court of the III Addl. District Judge (Fast Track Court), Ongole. The learned III Addl. District Judge by way of judgment and degree, dated 27-04-2011 dismissed A.S.No.78 of 2008.

Calling in question the validity and the legal sustainability of the said judgments and decrees rendered by the trial Court and the lower appellate Court, the present Second Appeal has been filed under Section 100 of Code of Civil Procedure. In the present Second Appeal it is contended by the learned counsel for the appellant that the Courts below did not appreciate the oral and documentary evidence available on record. It is also submitted by the learned counsel for the appellant that had the evidence available on record been taken into consideration from proper perspective the Courts below would have refused to decree the suit. It is also submitted by the learned counsel that no proper opportunity was given to the appellant herein by the Courts below to prove his case.

According to the pleadings available on record, defendants 1 and 2 are the husband and wife respectively and the first defendant owned the property admeasuring Ac.3-40 cents in Sy.No.524/1 of Konijedu village and the plaintiff/first defendant herein instituted O.S.No.355 of 1999 on the file of IV Addl. Junior Civil Judge's Court, Ongole against the first defendant/appellant herein for recovery of amount due under the pro-note and the said suit was decreed on 12-11-2001 and in view of non-payment of the debt amount covered by the said suit the plaintiff/first respondent herein filed Execution Petition vide E.P.No.215 of 2002 and got the said property attached. Subsequently the said property was brought to sale and the plaintiff/first respondent herein participated

in the auction with the permission of the court on 17-12-2003 and became the highest bidder. Subsequently, the daughter of the defendants by name Sudha Rani filed a claim petition in E.A.No.163 of 2003 claiming that she is the absolute owner of the said property and the said petition was dismissed by the executing Court and the same was confirmed in C.M.A.No.54 of 2003 by the appellate Court on 10-09-2004. Plaintiff thereafter obtained sale certificate from the Court and filed Execution Petition for delivery of possession and took delivery of the same on 15-11-2003 and according to the plaintiff since then he has been in possession and enjoyment of the property.

In the above background, alleging intervention in interference of the defendants, the first respondent instituted suit in O.S.No.914 of 2004. O.S.No.914 of 2004 was contested by the defendants by filing written statements. Basing on the pleadings available on record the trial Court framed following issues for consideration:

1. *Whether the plaintiff is in possession of the suit schedule property by the date of filing of the suit and whether the plaintiff's possession is valid or not?*
2. *Whether the plaintiff is entitled for permanent injunction as prayed for?*
3. *To what relief?*

During the course of trial, the plaintiff (first respondent herein) examined himself as PW1 apart from examining PW.2 on his behalf and marked Exs.A1 to A6. On the other hand, first defendant/appellant herein was examined himself as DW1 and no documents were filed.

The learned Prl. Junior Civil Judge, Ongole, after

elaborately considering the entire evidence available on record and after considering the issues decreed the suit on 19-02-2008. As against the said decree and judgment the first defendant/appellant herein preferred A.S.No.78 of 2008 on the file of the III Addl. District Judge (Fast Track Court), Ongole. The learned District Judge by way of a well considered judgment and decree, dated 27-04-2011 dismissed A.S.No.78 of 2008 thereby confirmed the decree of injunction granted by the trial Court in O.S.No.914 of 2004.

A perusal of the grounds of appeal sought to be urged by the appellant/first defendant manifestly discloses that there are absolutely no substantial questions of law involved in the present Second Appeal. In fact, both the Courts below meticulously considered all the issues and answered the same in favour of the plaintiff in the suit. It is a settled and well-established preposition of law that Second Appeal lies only on substantial questions of law as provided under Section 100 of Code of Civil Procedure.

In the instant case, this Court finds no such questions of law much less substantial questions of law, which calls for interference of this Court under Section 100 of Code of Civil Procedure.

Accordingly, 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

August 07, 2015

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

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