

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

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**SECOND APPEAL No.265 of 2009**

**Date:19.02.2015**

**Between:**

Maddu Venkata Subbaiah and others.

... Appellants.

AND

Reddycherla Laxmipathi Raju and others.

.....Respondents.

The Court made the following :

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

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**SECOND APPEAL No.265 of 2009**

**ORDER:**

This appeal is preferred against judgment dated 03-11-2008 in A.S.No.127/2006 on the file of VIII Additional District & Sessions Judge (Fast Track Court) , Guntur whereunder decree & judgment dated 05-06-2006 in O.S.No.16/1999 on the file of Additional Senior Civil Judge, Narasaraopet is confirmed.

2. Brief facts leading to filing of this second appeal are as

follows:-

Appellants herein are unsuccessful plaintiffs, who filed the suit against respondents herein for the relief of permanent injunction. Parties are hereinafter referred to as plaintiffs and defendants as arrayed in the suit for better understanding.

3. According to plaintiffs, first plaintiff and Devarasetty Venkata Sreeramulu, who is husband of second plaintiff and father of plaintiffs 3 to 6, purchased suit schedule property along with some other property from Chennapragada Ramaraju and Kotamraju under an agreement of sale dated 24-01-1982 for a sum of Rs.1,05,000/- and when the vendors failed to execute sale deed in terms of the agreement, first plaintiff and Devarasetty Venkata Sreeramulu filed O.S.No.165/82 for specific performance of agreement of sale and permanent injunction and the said suit was decreed and the plaintiffs obtained sale deed through Court as per specific performance decree and later filed E.A.No.55/1999 for delivery of suit schedule property and the property was delivered through Court Amin and the plaintiffs took possession of schedule property, which was vacant, on

20-02-1999 and the defendants made an attempt on 27-02-1999 to trespass into the schedule property, therefore, they are constrained to file suit for injunction. The contesting defendants disputed the claim of plaintiffs and according to them, the suit property is joint family property. According to

them, D1 is looking after the joint family property of Kotamraju and one of the sharers filed O.S.No.159/1996 for partition and the property is not divided and all the sharers have got right in the plaint schedule property and the plaintiffs were never in possession of the suit property. They also contended that suit property was divided into house plots and some constructions were also made and the delivery proceedings in E.A.No.55/1999 are only paper proceedings and no physical delivery is effected. It is further contended that power supply is also obtained for the constructions in the schedule land and the property was never delivered to plaintiffs and the allegation of threatening dispossession on 27-02-1999 is imaginary and the plaintiffs have no cause of action.

4. On these contentions, trial Court examined four witnesses and marked 13 documents on behalf of plaintiffs and examined five witnesses and marked 11 documents on behalf of defendants and on a over all consideration of oral and documentary evidence, trial Court held that plaintiffs failed to prove their possession over the plaint schedule property and dismissed the suit. Aggrieved by the dismissal of the suit, plaintiffs preferred appeal to the District Court and VIII Additional District & Sessions Judge (Fast Track Court), Guntur dismissed the appeal confirming the findings of the trial Court. Aggrieved by the same, present second appeal is preferred.

5. This Court admitted the second appeal treating the following grounds as substantial question of law as follows:-

*“(a) Whether the Judgment and Decree of a Court can be held as valid when the same is passed without considering the evidence and material on record?”*

*(b) Can a Court can nullify the decree and judgment passed in the earlier suit when the subsequent suit itself is not a suit for a declaration to nullify the previous decree and judgment?*

*(c) Can a Court can held the delivery of possession of the property passed in Execution Proceedings as mere paper delivery?*

*(d) Can a Court can draw different conclusions contra to the evidence on record and the pleadings?*

6. Heard arguments.

7. The main submission of the Advocate for plaintiffs is that both the Courts failed to consider the documents and oral evidence of plaintiffs, particularly delivery receipts executed by the Court Officer in Execution Proceedings. He submitted that by virtue of the findings of the trial Court and appellate Court, the earlier decree for specific performance and the execution proceedings thereon became nullified, therefore, findings of the Courts below have to be treated as perverse. He further submitted that when the property was delivered to the plaintiffs through Court giving a finding that such delivery is only a paper delivery is contrary to the evidence and material on record and the same would

amount to perverse findings. He submitted that both the Courts travelled beyond the scope of enquiry. He submitted that the evidence of P.Ws.1 to 4 would clearly show that plaintiffs were in possession as on the date of the suit and since they have got legal right over the suit schedule property under a specific performance decree, the Courts below ought to have protected possession of the plaintiffs, therefore, the judgments of the Courts below are liable to be set aside.

8. On the other hand, Advocate for defendants submitted that from the evidence, it is established that the pleadings of the plaintiffs are incorrect and therefore, the Courts below refused to grant any relief to the plaintiffs.

He submitted that the plaintiffs specifically contended that the suit land is a agricultural land, but the same is falsified through evidence and for that reason, both the Courts refused to grant the discretionary relief of injunction.

He submitted that when the suit land was converted into house plots long prior to the alleged specific performance decree, the recitals in the delivery receipts and the evidence of witnesses supporting the plea of plaintiffs that it is a agricultural land was rightly not accepted by the Courts below and there are absolutely no grounds to interfere with the concurrent findings. He further submitted that even the question of law raised in the grounds are not at all substantial question of law, they only relate to factual aspects, therefore, the second appeal is not maintainable.

9. Now the point that would arise for my consideration in this appeal is whether there are any substantial questions of law as urged by the plaintiffs which require determination by this Court?

10. **Point:-**It is the specific case of the plaintiffs that they purchased suit property under an agreement of sale and that they filed suit on the basis of such agreement and they obtained a decree for specific performance. According to plaintiffs, in the execution proceedings, sale deed was executed in favour of plaintiffs and property was also delivered through Court and as the defendants tried to interfere with possession, after delivery, they are constrained to file the suit. According to plaintiffs, this plaint schedule property was delivered to them by Court Amin on 20-02-1999 under Ex.A13-delivery receipts. Plaintiffs examined the Court Amin as P.W.2 and one of the witnesses for the delivery receipts as P.W.3 and relied on their evidence to support their contention that this suit property was delivered to them. The main contention of the defendants is that the delivery and Ex.B13 is only a paper delivery and there is no physical delivery. According to them, the suit property was not an agricultural land and divided into plots long back and constructions have also come up and to substantiate it, they relied on the Commissioner's Report relating to earlier suit, which is marked as Ex.B3. As seen from this Ex.B3, Advocate Commissioner visited two different sites and in

both the sites, he noticed houses and thatched huts. There is no dispute as to the fact that the property covered by this suit and the property covered by suit in which, Commissioner made a local inspection is one and the same. According to this Commissioner's report, this local inspection was in November-1985, which is long prior to the alleged delivery and Ex.A13. When there were huts and constructions in the schedule property even in the year 1985, mentioning that the property is an agricultural land in Ex.A13 clearly supports the version of the defendants, that it is only a paper transaction and that the proceedings under A13 are not recorded on physical verification. According to plaintiffs, in their specific performance suit, they also prayed for injunction and admittedly, no relief of injunction is granted. So when such is the case, the burden is heavy on the plaintiffs to prove their possession in respect of plaint schedule property. Though trial Court and appellate Court by considering the report of Advocate Commissioner, which is contrary to the facts recorded in the delivery receipts, disbelieved the version of the plaintiffs and dismissed the suit. The relief of injunction is a discretionary relief and when such discretion relief is claimed, it is expected that plaintiffs should come to Court with clean hands and with true facts. When the plaintiffs were found that they have not come to Court with clean hands and facts pleaded are not true and contrary to the facts that were recorded in the earlier proceedings, I am of the view that both the Courts were right in refusing the relief

of permanent injunction.

11. Further, according to plaintiffs, property was delivered to them on 20-02-1999 and alleged attempt by defendants was on 27-02-1999. It is the case of plaintiffs that Execution Court recorded the delivery on 01-03-1999. From this, it is clear that execution proceedings were pending by the date of alleged threat from defendants, who are JDrs according to plaintiffs. If really it is so the normal immediate action of plaintiffs should have been to report the alleged threat to Executing Court and see that the same is recorded in the execution proceedings. No such steps are taken which is a strong circumstance against plaintiffs.

12. As rightly pointed out by Advocate for defendants all the grounds that are shown as grounds involving substantial question of law are only on factual aspects and they are not at all related to any question of law. Therefore, the contention that the Courts below passed the orders without considering the evidence and material on record and that the findings are perverse cannot be accepted. On a scrutiny of the material on record, I am of the considered view that both the Courts rightly appreciated the evidence on record and came to a right conclusion and that there are absolutely no grounds to interfere with the concurrent findings.

13. One of the contentions of the plaintiffs is that the findings of the Courts below would amount to nullifying the

earlier specific performance decree, but the said contention is not at all correct, because what the Courts below have examined and enquired is whether the plaintiffs have obtained physical possession of the suit property in pursuance of the earlier decree and while deciding that point on the basis of evidence, both the Courts found that there is no delivery of physical possession and it is only a paper transaction and that finding would no way nullify the earlier decree of specific performance.

14. For these reasons, I am of the view that no substantial question of law is involved in this second appeal and that the appeal is devoid of merits and liable to be dismissed.

15. Accordingly, second appeal is dismissed as devoid of merits. No costs.

16. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

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***JUSTICE S. RAVI KUMAR***

**Date:19.02.2015**

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