

THE HON'BLE SRI JUSTICE K.C. BHANU

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SECOND APPEAL No.547 OF 2014

JUDGMENT:

The Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is filed challenging the judgment and decree, dated 29.04.2010, in Appeal Suit No.235 of 2008 passed by the I Additional District Judge, Guntur, whereunder and whereby, the judgment and decree, dated 05.08.2008, in Original Suit No.182 of 2004 passed by the Senior Civil Judge, Bapatla, was dismissed confirming the judgment of the trial Court.

2. Plaintiff in the Original Suit is respondent No.1 herein, whereas defendants in the Original Suit are the appellant and respondent No.2 herein respectively. For better appreciation of facts, parties are hereinafter referred to as they are arrayed before the trial Court.

3. Brief averments that are necessary for disposal of the present Second Appeal may be stated as follows:

Case of the plaintiff is that he is owner of item Nos.1 and 2 of the plaint schedule property having purchased the same from his elder brother Marripalem Sree Ramulu under a registered sale deed, dated 04.07.2008. Ever since he has been in possession and enjoyment of the same. The revenue authorities having accepted his title issued pattadar passbook and title deed. The defendants, who are closely related to each other have no manner of right whatsoever over the plaint schedule property and have been continuing in the possession of the property. Hence the suit.

4. The 1st defendant filed written statement stating that he is a tenant in respect of the plaint schedule property and that he has been in uninterrupted continuous possession of the property and therefore, he cannot be evicted and hence, he prayed to dismiss the suit.

5. The 2nd defendant filed written statement stating that he was a tenant of Marrisalem Sree Ramulu, who is no other than the brother of plaintiff, for some time and later he left the land; that the 1st defendant had been cultivating the schedule land; that he has no interest over the schedule property and he is not a necessary party to the suit and therefore, he prayed to dismiss the suit against him.

6. Basing on the above pleadings, the following issues have been framed by the trial Court for trial:

- 1) "Whether the plaintiff is entitled for declaration that he is the owner of the plaint schedule property as prayed for?
- 2) Whether the plaintiff is entitled for possession of plaint schedule property as prayed for?
- 3) Whether D2 is not necessary party to the suit?
- 4) Whether the plaintiff is entitled for mesne profits as prayed for?
- 5) To what relief?

7. On behalf the plaintiff, PWs.1 and 2 were examined and Exs.A.1 to A.8 were marked. On behalf of the defendants, DW.1 was examined and no documents were marked.

8. The trial Court, after considering the material available on record, came to the conclusion that the defendants have no right or title to the property, but the defendants forcibly dispossessed the plaintiff from the schedule property, therefore decreed the

suit. Challenging the same, an appeal was preferred and the appellate Court dismissed the appeal confirming the trial Court's judgment. Challenging the same, the present Second Appeal is filed.

9. The Second Appeal is sought to be admitted on the ground that the 1st defendant has been in possession and enjoyment of the plaint schedule property for several decades and the same has not been taken into consideration by both the Courts below, which constitutes a substantial question of law.

10. In a suit for declaration, the plaintiff must stand or fall on his own legs. To substantiate the same, he filed Ex.A.1-registered sale deed, which was executed by the original owner Marripalem Sree Ramulu, who is no other than the brother of the plaintiff, on 14.07.1998 and that has not been denied or disputed. The revenue authorities also issued a pattadar passbook and title deed, which were marked as Exs.A.2 and A.3 respectively. Contra to those documents, the 1st defendant, who claims to be a tenant did not file single document as to how he can continue in the possession of the property. Except his oral assertion, he has not filed single document to show that he is a tenant in respect of the plaint schedule property, having taken the same from the elder brother of the plaintiff. The oral evidence would go to show first defendant never cultivated the land.

11. The case of the plaintiff is that the 1st defendant was never in possession of the property, but prior to filing of the suit, the 1st defendant forcibly entered into the plaint schedule lands and therefore, the plaintiff was constrained to file a suit for declaration of title and for recovery of possession. The evidence of PWs.1

and 2 remained unchallenged. The documentary evidence coupled with the oral evidence establishes the plaintiff's title to the plaint schedule property and in view of the fact that the plaintiff was forcibly dispossessed, the relief of recovery of possession also ordered by the trial Court. None of the substantial questions of law raised in the second appeal is the real substantial question of law. Therefore, question of admitting the Second Appeal does not arise. The appeal is devoid of merit and the same is liable to be dismissed.

12. Accordingly, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE K.C. BHANU

Date:20.02.2015

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