

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.1231 OF 2012

Dated 10th April, 2015

Between:

M.Chandra Sekhar Reddy and others.

..Appellants.

And:

M.Siddaiah.

..Respondent.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.1231 OF 2012

JUDGMENT:

This appeal is preferred against judgment dated 14-8-2012 in A.S.No.20 of 2004 on the file of Additional District Judge, Hindupur whereunder judgment dated 4-10-2004 in O.S.No.13 of 1997 on the file of Senior Civil Judge, Hindupur is confirmed.

Appellants herein are D.8, D.11 to D.13, D.16 and D.17 and respondents herein is plaintiff in the above referred O.S.No.13 of 1997 on the file of Senior Civil Judge, Hindupur. They are hereinafter referred to as plaintiff and defendants as arrayed in the suit for convenience and better understanding.

Plaintiff filed O.S.No.13 of 1997 against six defendants seeking permanent injunction in respect of plaint schedule property which consists of six items. Items 1 to 4 of plaint schedule are shown to have common boundaries, whereas, items 5 and 6 are having common boundaries, and the plaint schedule property originally belonged to the joint family of one S.P.Aacharappa. On 6-3-1984 the plaintiff, one B.A.Samiulla, husband of D.3, and father of D.4 and D.5 and one P.L.Sreeramulu, 6th defendant, purchased the plaint schedule property from S.P.Aacharappa, his son S.A.Venugopalachari, Venkatachari, s/o Venkatappachari, S.Ramachandrachari, s/o Adimurtachari for a valid consideration of

Rs.18,500/- under a registered sale deed and put in possession of the property and since the said date, the plaintiff and other two vendees were in possession and enjoyment of the suit schedule property continuously and uninterruptedly. After the death of B.A.Samiulla, his wife and children (D.3 to D.5) having received Rs.50,000/- from the plaintiff, relinquished their right in the plaint schedule property, so also, 6th defendant having received Rs.50,000/- relinquished his right in the plaint schedule property in favour of the plaintiff. Since the defendants 3 to 6 have not joined as plaintiffs to the suit, they are added as proforma defendants. In fact, D.3 to D.6 have no possession over the plaint schedule property and the plaintiff alone is in exclusive possession and enjoyment of the plaint schedule property for more than statutory period of 12 years to the knowledge of the defendants 1 to 3 and thus, the plaintiff perfected his title to the suit schedule property by way of adverse possession also. The plaintiff's name is also shown as pattadar, possessor of the plaint schedule property in all the relevant revenue records. The defendants 1 and 2 without having any right or possession over the said property, are trying to dispossess the plaintiff from the said property.

During pendency of suit, D.1 died and his L.Rs. are added as D.7 to D.13. D.2 also died and his L.Rs. are added as D.14 to D.22.

Only appellants herein contested the suit whereas other defendants remained exparte.

The 2nd defendant filed written statement denying the plaintiff's title and possession over the plaint schedule property and also his case as averred in the plaint. The case of the 2nd defendant is that S.P.Aacharappa, one of the vendors of plaintiff and two others filed a suit earlier in O.S.124/83 on the file of the court of Senior Civil Judge, Penukonda against defendants 1 and 2 herein who contested the said suit by filing written statement claiming that both the defendants 1 and 2 original owners of the suit schedule property which is common subject matter in both the suits. It is further contended that the defendants 1 and 2 are brothers and their father Hanumaiah purchased the plaint schedule property in a court auction held in E.P.408/35 in O.S.No.383/33 on the file of District Munsif, Penukonda, and the said Hanumaiah was put in possession of the plaint schedule property herein and he continued to be in possession and enjoyment of the said property till his death and after his death, the defendants 1 and 2 are continued to be in possession and after the death of 1st defendant, his legal representatives are in possession and enjoyment of the plaint schedule property along with this defendant (D.2). This defendant (D.2) along with Legal

Representatives of 1st defendant have been cultivating the plaint schedule land by raising crops. The Judgment Debtor in E.P.408/35 is no other than the said S.P.Aacharappa and as such, the plaintiff's claim to the said Aacharappa is untenable. Since the plaintiff's title is denied, the suit for bear injunction is not maintainable.

On these contentions and rival contentions, trial court examined three witnesses and marked 18 documents on behalf of plaintiff and examined five witnesses and marked 33 documents on behalf of contesting defendants and on an overall consideration of oral and documentary evidence, decreed the suit in part granting injunction in respect of items 1, 5 and 6 of plaint schedule property and dismissed claim in respect of items 2 to 4. Aggrieved by the judgment of the trial court, contesting defendants preferred A.S.No.20 of 2004 and plaintiff preferred cross-appeal No.1 of 2004 and the appellate court on a reappraisal of the evidence, dismissed both the appeals. Aggrieved by the dismissal of their appeal, defendants preferred the present Second Appeal.

Hear both sides.

Advocate for appellants contended that father of D.1 and D.2 purchased the suit properties in a court auction that was held on 31-10-1935 which was confirmed on 3-12-1935 and that possession was delivered to the auction purchaser through court, therefore, vendors of plaintiff have no title as on the date of sale deed dated 6-3-1984. He further submitted that the plaintiff's vendor Acharappa filed O.S.No.124 of 1983 for declaration of title and permanent injunction but the said suit was dismissed in the year 1988 and therefore second suit is not maintainable and that findings of both the courts are not correct. He further submitted that the trial court and appellate court held that only items 2,3 and 4 were alone purchased by father of D.1 and D.2 in the court auction but the said findings are not correct and both the courts have not properly verified the documents particularly Ex.B.31 and Ex.B.32 to correlate these items and both the courts misread these documents in arriving on such findings. He further submitted that misreading of documents is a substantial question of law as held by Supreme Court, therefore, this court can interfere in the Second Appeal, the said misreading.

On the other hand, advocate for plaintiff submitted that both the courts on appreciation of oral and documentary evidence found that the appellants are nothing to do with items 1,5 and 6 of the suit schedule property and such findings cannot be interfered in a Second Appeal. It is submitted that duty of court is to discover truth and technicalities is only a secondary. He further submitted that contesting defendants relied on Ex.B.1 which is the sale certificate and in that document, there is no reference about items 1,5 and 6

both trial court and appellate court have rightly held that appellants are nothing to do with these three items and such findings based on evidence cannot be interfered in a Second Appeal.

He further submitted that evidence on record would clinchingly show that plaintiffs have both title and possession in respect of items 1, 5 and 6 for which relief is granted and concurrent finding of the courts below based on evidence cannot be interfered by this court in a Second Appeal. He further submitted that when there is no error of fact or law, second appeal is not maintainable.

He further submitted that when the suit is tried against 22 defendants, without showing other defendants as respondents along with plaintiff in the second appeal is not maintainable.

This court while admitting the appeal, formulated the following as substantial questions of law.

“Whether the courts below are not in error in misreading the recitals in Ex.B.31 and Ex.B.1 sale certificate and in holding that items 1,5 and 6 of the plant schedule are not mentioned?

Whether the courts below are not in error in holding that the plaintiff is entitled for injunction on the ground that Ex.B.1 sale certificate and Ex.B.31 registration extract of sale certificate do not contain the items mentioned in 1, 5 and 6 of the plaint schedule?

Having given a finding that the plaintiff has failed to prove possession over the property, whether the courts below are not in error in decreeing the suit for injunction.”

Now the point that would arise for my consideration in this appeal is whether grounds urged as substantial questions of law on behalf of appellants are tenable and can be accepted.

POINT:

As already referred above, suit is filed in respect of six items and decree is granted in favour of plaintiff for three items only. According to appellants, both the courts misread recitals in Ex.B.1, sale certificate in holding that items 1,5 and 6 are not covered in the sale certificate. Advocate for appellant submitted that interpretation of a document which goes to roots of the case is a substantial question of law and to support his argument, he placed reliance on the judgment of Supreme Court in *P.CHANDRASEKHARAN AND OTHERS Versus S.KANAKARAJAN AND OTHERS* () relying on earlier decision of Supreme Court held that interpretation of recitals of a document is a substantial question of law.

In *HERO VINOTH V. SESHAMMAL* (), Hononourable Supreme Court held that general rule is that High Court will not interfere with the concurrent findings of the courts below, But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence. (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

In answer to this submission, learned Senior Advocate for plaintiff submitted that all the above grounds formulated by this court are only questions of facts and not questions of law much less substantial questions of law. To support his submission, he has relied on a decision of Supreme Court in *SANTOSH HAZARI v. PURUSHOTTAM TIWARI (DEAD) BY LRS.* () for the proposition that without formulating substantial question of law, the Second Appeal is not maintainable. But that principle has no force here because this court has formulated 3 grounds as substantial questions of law now it has to be seen whether those grounds are touching questions of fact only or any questions of law.

The main arguments of the appellants is that Ex.B.1 sale certificate would also cover items 1,5 and 6 of the suit schedule property and both the courts misread this document.

As seen from the material along with items 2,3 and 4 of plaint schedule , some other items were also purchased by the father of D.1 and D.2 but those other items are not items 1,5 and 6.

The lower appellant court specifically framed a point whether all the six items of plaint schedule property are purchased by defendants 1 and 2 namely Hanumayya or only items 2 to 4 in the court auction held in E.P.No.408 of 35 in O.S.No.380 of 1932. The appellants claimed right in the suit schedule property only through D.1 and D.2 therefore, if D.1 and D.2 have got any right over items 1,5 and 6 also then only they can resist claim of plaintiff in respect of these items. Both trial court and appellate court concurrently held that items 1,5 and 6 are not included in Ex.B.1 sale certificate and even according to Ex.B.32, D.1 and D.2 purchased items 2,3 and 4 and other items but not items 1,5 and 6.

Now the objection of the appellants is that both the courts misread Ex.B.1 and B.32 and those documents show that items 1,5 and 6 are

also part and parcel of properties purchased in the court auction.

As rightly pointed out by advocate for plaintiff. Except Ex.B.1 sale certificate, there is no other material to support the version of defendants. When Ex.B.1 sale certificate do not positively show that items 1,5 and 6 are also purchased in the court auction without any supporting evidence, the claim of appellant cannot be accepted and both trial court and appellate court have rightly discarded the objection of appellants.

From the evidence on record, it is clear Hanumaiah grandfather of D.W.1 purchased items 2 to 4 only and not all the six items of suit schedule. There is no misreading of Ex.B.1 and B.32 as contended by appellants. Both trial court and appellate court carefully scrutinised these two documents and came to a correct conclusion and there is no misreading.

On a close reading of entire material and evidence on record with reference to grounds (b), (c) and (e), formulated as questions of law, I am of the view that these grounds are only questions of fact and not questions of law. As per settled law only in case of perverse findings of fact, then only, such findings can be interfered in a second appeal but when the findings are with sound reasoning, such findings cannot be interfered.

As seen from the material, when the same point with regard to ex.B.1 and B.32 was agitated before first appellate court, learned appellate judge on a reappraisal of entire oral and documentary evidence, held that items 1, 5 and 6 did not find place in Exs.B.1 and B.32, therefore, such findings which are based on evidence cannot be termed as perverse. Though advocate for appellant cited some rulings for the proposition that even findings on fact which are perverse can be interfered in Second Appeal by exercising powers under Section 100 C.P.C. as that proposition is not applicable here, since the findings of courts below are not perverse, I am not referring to those decisions.

On a scrutiny of the material, all the grounds formulated as substantial question of law are only grounds touching factual aspects and there is no question of law involved in this appeal much less substantial question of law and therefore, there are no merits in the Second Appeal.

For these reasons, I am of the view that Second Appeal is devoid of merits and liable to be dismissed.

Accordingly, this second Appeal is dismissed with costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Dated 10th April, 2015.

Dvs.

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Dvs