

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.866 of 2012
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JUDGMENT:

This Second Appeal under Section 100 of the Code of Civil Procedure by the unsuccessful defendant is directed against the decree and judgment dated 17.02.2010 of the learned I Additional District Judge, Ranga Reddy District passed in A.S.no.260 of 2006. The learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 16.03.2006 of the learned II Additional Senior Civil Judge, Ranga Reddy District passed in O.S.no.527 of 1999 filed by the sole plaintiff for a perpetual injunction restraining the sole defendant from interfering with the peaceful possession of the plaintiff over the plots bearing nos.5 and 6 of a total extent of 533 square yards in survey no.36/3 situated at Bandlaguda village, Uppal Mandal, Ranga Reddy District, more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned counsel for the parties. I have perused the material record.

3. The learned counsel for the appellant had contended that the following substantial questions of law are involved in this second appeal and that therefore, the second appeal deserves admission.

a) **Whether the decree and judgment of the courts below is perverse based on surmises and conjectures without proper appreciation of evidence on record in so far as the findings against the appellant is concerned?**

b) **Whether the findings of the lower appellate Court are vitiated for non consideration of the evidence adduced on behalf of the appellant.**

c) **Whether the lower courts have examined properly the evidence adduced by the parties by oral and documentary evidence in prospective way.**

d) **Whether on what grounds the lower courts not appreciated the documents of Exhibits marked in the case from B-1 to B-6 though the documents clearly**

established the right of the appellant and possession of the suit land.”

(Reproduced verbatim)

Per contra, the learned counsel for the successful plaintiff would contend that the courts below have recorded concurrent findings of fact on all the issues involved and that no pure questions of law much less substantial questions of law are involved and that therefore, the second appeal is liable for dismissal at the stage of admission.

4. Thus, this matter is heard only on the limited aspect as to whether or not the questions raised as substantial questions of law are really involved and if so, whether the second appeal deserves admission or not.

5. It is necessary to first refer to the facts that lead to the filing of this appeal and the pleadings of the parties.

5.1 The case of the plaintiff, in brief, is this: ‘The plaintiff is the owner of the aforementioned plots having purchased the same from Anna Abraham for a consideration of Rs.1,33,500/- under a registered sale deed bearing document no.3744 of 1997. The said Anna Abraham, in his turn, had purchased the said plots from the original owner Laxmikantha Rao under a registered document bearing no.5441 of 1989. Since the date of the said purchase, the plaintiff is in peaceful possession and enjoyment of the plaintiff schedule plots. She had got constructed a compound wall, foundation trench, in order to protect the property from encroachers and land grabbers. On 25.09.1999, the plaintiff had engaged labourers and gathered construction material in order to raise the compound wall. In the absence of the plaintiff, the defendant along with her men came to the plaintiff schedule property and had threatened the labourers and obstructed them from doing any work in the plaintiff schedule property. Again, the defendant came to the plaintiff schedule property on 27.09.1999 and interfered with the construction work of the plaintiff. Hence, the plaintiff is constrained to file the suit.’

5.2 The case of the defendant, in brief, is this: ‘The material allegations in

the plaint are false. On 26.09.1999, the defendant had started raising a compound wall by engaging labourers in the suit schedule plot admeasuring 300 square yards. At that time, the plaintiff and her husband-B.Sudhakar Reddy and some others came to the schedule plot and had tried to stop the work. Immediately, the defendant had lodged a complaint with the DSP, Saroornagar, Ranga Reddy District. Thereafter, the defendant had raised a compound wall. On 01.10.1999, when the lady labourers engaged by the defendant are attending to the curing work of the compound wall, the plaintiff and her husband along with ten others came to the plaint schedule property and had tried to demolish the compound wall. The defendant had again reported the matter immediately to the police of L.B.Nagar of Ranga Reddy District. The defendant is a permanent resident of Vijayawada. The question of the defendant threatening the plaintiff does not arise. The father of the defendant late Nagi Reddy had purchased the plot bearing no.145 in survey no.36/3 admeasuring 300 square yards situated at Krishna Nagar colony, Bandlaguda of Uppal Mandal under registered document no.1475 of 1969 from M/s Srinivas Real Estate Enterprises, AC Guards, Hyderabad. Since the date of the said purchase, the father of the defendant was in possession and enjoyment of the said plot till his death on 01.07.1998. The defendant's mother had died in the year 2000 leaving behind her the defendant and her sister as her legal heirs. Therefore, the defendant and her sister have become owners of the said plot. The plaintiff is in no way concerned with the plaint schedule property. The suit is filed to grab the defendant's property. The plaint schedule property is not situated in survey no.36/3. Hence, the suit may be dismissed.'

5.3 Taking into consideration the above pleadings, the trial Court had framed the following issues for trial:

1. Whether the plaintiff is entitled for the permanent injunction as prayed for?
2. To what relief?

At trial, PWs 1 to 3 were examined and exhibits A1 to A15 were marked on the side of the plaintiff. DWs 1 and 2 were examined and exhibits B1 to B6

were marked on the side of the defendant. On merits, the trial Court had decreed the suit of the plaintiff. The first appeal preferred by the defendant was dismissed. Therefore, the defendant is before this Court.

6. The learned counsel for the defendant/appellant would contend as follows:

The judgments of the courts below are based on surmises, suspicions, imaginations and wrong interpretation of facts and the law; and, the said findings are against the evidence brought on record. The Courts below had erred in appreciating the oral and documentary evidence. The courts below did not consider the fact that the defendant made a complaint under exhibit B4 on 24.08.1999 itself to the Sub Inspector, L.B.Nagar stating that the husband of the plaintiff had illegally encroached upon the site and dug the trenches for the compound wall and that inspite of the defendant showing her documents, the plaintiff had forcefully proceeded with the work. The courts below ignored the said fact and decreed the suit erroneously observing that no crime was registered pursuant to exhibits B4 and B5 complaints of the defendant. The Court below had failed to appreciate that in the cross-examination of PW1, the contents of the reports given to the police were put to PW1 and the cross-examination of PW1 discloses that the entire case put forward by the plaintiff is false and fabricated. PW1 in the cross-examination had stated that before instituting the suit, a police complaint was given; and that statement would show that the plaintiff's case as set up in the plaint is totally false. The courts below did not consider the fact that PW1 had obtained the electrical service connection and got dug up a bore well only after filing of the suit. Ignoring the fact that all these acts were done after filing of the suit, when the matter is *sub judice*, the suit was decreed erroneously. The boundaries of exhibit A1 document do not tally with the boundaries of exhibit A2 document; and, they also differ from the boundaries stated in exhibit B1 document. In the said circumstances, the burden lay upon the plaintiff to prove her case; in the absence of any proof of the material facts, the suit is liable to be dismissed. Therefore, the courts below ought to have dismissed the suit instead of decreeing the suit. PW1 had stated in the cross-

examination that she has no objection to measure the suit schedule property through the process of the Court. Instead of giving a direction to measure the property, the courts below had decreed the suit contrary to facts and law. Both the courts did not properly appreciate the evidence of PW1 and the further fact that exhibit A13 is not an approved plan and that though it was stated that the same was obtained by one Ramesh, the said Ramesh was not examined. It is for the plaintiff to substantiate her title to the property that is described within the specific boundaries mentioned in the plaint schedule. In the absence of such proof, the plaintiff is not entitled to succeed in a suit for perpetual injunction. The judgments of the courts below are perverse and are vitiated for non-consideration of material evidence including exhibits B1 to B6. The discussions and the conclusions in the judgments of the courts below are erroneous. The second appeal be admitted as the questions raised are involved.

7. Conversely, the learned counsel for the plaintiff while supporting the decrees and the concurrent findings in the judgments of the courts below had submitted as follows:

The Courts below had recorded concurrent finding of fact on proper appreciation of facts and evidence. The Courts below having framed the issues/points for determination had answered all the relevant and contentious issues in favour of the plaintiff and decreed the suit. The property of the plaintiff viz., plots nos. 5 and 6 as mentioned the plaint schedule admeasuring 533 square yards and the and the plot no.145 admeasuring 300 square yards being claimed by the defendant are totally different properties and are situate far away from each other. The plaintiff had established her lawful possession by adducing the required standard of evidence. The Courts below have rightly considered the evidence brought on record and had recorded well reasoned findings. There is no substance in the substantial questions and the second appeal is liable to be dismissed at the stage of admission, being devoid of merit.

8. I have carefully examined the pleadings and analytically evaluated the evidence brought on record. I have noted the submissions. The plaintiff had

reiterated her pleaded case in her affidavit filed in lieu of examination in chief. She had exhibited exhibits A1 to A15. Similarly, the defendant had affirmed her defence in her affidavit filed in lieu of her examination in chief.

While maintaining her stand in her cross-examination, the plaintiff had further examined PWs 2 and 3 as supporting witnesses to corroborate her version. PW2 who was said to have been appointed in the month of December 2000 as a watchman by PW1 to guard the plaint schedule property had stated that he was living in one room which was constructed by PW1 in the suit schedule property and that on 23.03.2003, the defendant with the help of the labourers had forcibly dismantled a part of the compound wall and that he had immediately reported the matter to PW1. He had further testified about the electrical service connection that was obtained by the PW1 to the plaint schedule property and the bore well that was got dug up by the plaintiff in the property. PW3 is the husband of the plaintiff. Similarly, DW1 while maintaining her stand in the cross-examination had further examined DW2 who is her cousin. He spoke about the purchase of the property by the father of the defendant in the year 1969 and the defendant starting the work of raising the temporary compound wall around the plot and the obstruction said to have been caused for such work by the plaintiff and her husband and the lodging of the report with the DSP and the later report with the police of L.B.Nagar. Except examining her cousin, who is an interested witness, the defendant did not examine any independent witness. Whereas, the plaintiff had examined PW2, an independent witness whose evidence on the material aspects had remained unchallenged in the cross-examination. Exhibit A2, on a perusal would show that the plaintiff had purchased the plaint schedule plots. The antecedent title deed in respect of the plaint schedule plots of her vendor is exhibit A1. The plaintiff had also exhibited certified copy of another sale deed as exhibit A13, where under the original owner-Laxmikantha Rao had sold plot nos.3 and 4 in the same survey number to one Saramma. Though no approved layout plan is filed by the plaintiff, her sale deed recitals would show that the land was divided into plots and the plots were sold by the original owner-Laxmikantha Rao to various persons including the vendor

of the plaintiff. The certified copy of the sale deed of the father of the defendant was exhibited as exhibit B1. In this document, there is a variation in regard to the survey number. The survey number was mentioned at one place as '36/2' and at another place as '36/3'. The defendant also did not file any approved layout plan, if any, prepared. However, exhibit B2 plan on a perusal would show that plot no.145 being claimed by the defendant is located on the extreme North-Western corner of the entire layout whereas plot nos.5 and 6 in the said plan are located on the Western side of the remaining land in sy.no.36. Therefore, the plot nos.5 and 6 on one hand and plot no.145 on other of the said plan are situated at different corners of the land covered by the said lay out. The plaintiff is claiming two plots bearing nos.5 and 6 admeasuring 533 square yards whereas the defendant is claiming plot no.145 admeasuring 300 square yards. Even the extents do not tally. The boundaries of the properties of the parties are also totally different. PW1 in her cross-examination had deposed that by the time of filing of suit, there is a basement in the suit schedule property and that they had obtained electricity service connection after filing of the suit and that she had also got dug up a bore well in plot no.6 out of the two plots before filing of the suit. The statement of PW1 was not challenged in her cross-examination. PW2 had *inter alia* stated that he is residing in the plaint schedule plot. Further, even in the memorandum of grounds of second appeal, the defendant had stated that the husband of the plaintiff had illegally encroached upon the property and had dug up trenches for compound wall and had proceeded with the construction work ignoring the objections of the defendant. It is also not in dispute that the plaintiff had obtained an electric service connection and had also got dug up a bore well in the plaint schedule property. The said facts and evidence available on record, without a doubt, establish her possession over the plaint schedule plots. According to the deposition of DW1, original owner - Laxmikantha Rao is having property to the West of her plot. Thus it is *ex facie* clear from the evidence brought on record that the plots of the plaintiff and the plot of the defendant are not even situate adjacent to one another. Exhibits A1 and A2 sale deeds which correspond to the plaint schedule plots coupled with the other evidence on record sufficiently

establish plaintiff's lawful possession over the plaint schedule plots. The Court below had referred to the boundaries of the properties mentioned in exhibits A1 and A2 as well as in exhibit B1; and, on such reference to the boundaries had observed that it was quite clear that the descriptive particulars in exhibit B1 are not tallying with the plaint schedule property and that on the other hand, the boundaries mentioned in the plaint schedule are exactly tallying with the descriptive particulars mentioned in the schedule of exhibit A2 sale deed of the plaintiff and that therefore, the contention of the defendant that the plaintiff is wrongly claiming the plaint schedule property basing on the recitals in exhibit A2 document cannot be accepted. Having thus analyzed the oral and documentary evidence, the Courts below have recorded findings to the effect that the plaintiff had established lawful possession as on the date of the suit and at all relevant times and that she had therefore, made out a case as required under facts and in law for granting the perpetual injunction.

9. Having regard to the reasons, this Court finds that the courts below had considered the facts accurately and the evidence in a proper perspective while recording the well reasoned findings on the issues/points involved and rightly decreed the suit in favour of the plaintiff. There is neither misappreciation of facts and evidence nor non-consideration of the same or misapplication of material evidence to the facts by the Courts below. Therefore, the contention that there is perversity in the findings of the courts below cannot be countenanced.

10. Viewed thus, this Court finds that the courts below are justified in decreeing the suit of the plaintiff basing on her lawful possession. Having regard to the reasons assigned, this Court finds that the substantial questions of law sought to be raised are not substantial questions of law and that no such questions are involved in this second appeal and that there is no substance in the questions raised and that, therefore, the appeal is liable to be dismissed at the admission stage being devoid of merit. The law is well settled that a second appeal shall not be admitted if no substantial question

of law arises for consideration and when no substantial question of law is involved. The view of this court is reinforced by the ratio in the decision in **Gurudev Kaur v. Kaki** (AIR 2006 SC 1975). In the case on hand, after careful examination of the pleadings, the evidence and the contentions, this court found that no substantial question of law is involved. Consequently and in view of the narrow compass of Section 100 of the Code of Civil Procedure, this Court finds that this second appeal is liable for dismissal at the stage of admission.

11. In the result, the Second Appeal is dismissed at the stage of admission.
No costs.

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

01st October 2015
RAR

M. SEETHARAMA MURTI, J

