

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1277 of 2013

Date:04.02.2015

Between:

A.V.S.Kumar

..... Appellant.

AND

Patlolla Anjireddy and others.

.....Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1277 of 2013

ORDER:

This appeal is preferred against judgment dated 23-08-2012 in A.S.No.18/2009 on the file of Special Judge For Trial of SCs & STs (Prevention of Atrocities) Act, 1989-cum-V Additional District & Sessions Judge, Medak at Sanga Reddy whereunder judgment and decree dated 24-11-2008 in O.S.No.641/2004 on the file of Principal Junior Civil Judge, Ranga Reddy was confirmed.

2. Appellant herein is defendant and respondents herein

are plaintiffs in the above referred suit O.S.No.641/2014 and they are hereinafter referred to as plaintiffs and defendant as arrayed in the suit.

3. Brief facts leading to this appeal as are as follows:-

Plaintiff filed the above suit for mandatory injunction contending that plaintiff No.1 is the husband of plaintiff No.2 and the plaintiff No.3 is their daughter. The land bearing Survey No.814, situated at Rudraram Village of Patancheru Mandal is the joint family property of the plaintiffs and others. Laxma Reddy, the father of first plaintiff was entitled to half share in the said survey number and one Balkista Reddy S/o.Narayan Reddy and his brother Rangareddy are entitled for $\frac{1}{4}^{\text{th}}$ share and Kistareddy S/o.Narasareddy and his two brothers by name Sangareddy and Anjireddy are entitled for remaining $\frac{1}{4}^{\text{th}}$ share. The total extent of land in Survey No.814 is Acs.15-31 guntas wherein the plaintiff's father was entitled for Acs.7-34 guntas and Balkistareddy and his three brothers are entitled for Acs.3-38 guntas and Kistareddy and his brother Sangareddy are entitled for Acs.3-39 guntas. There was a partition between the sharers and Balkistareddy and his brother Rangareddy got towards their share Acs.3-38 guntas in the north-western corner and Kistareddy and his brother Sangreddy got their share towards the south-eastern corner and Laxmareddy got his share towards Kistareddy north-eastern corner and south-eastern corner. Kistareddy and his brother Sangreddy sold their share of land to the first plaintiff and Balakistareddy and his brother

Rangareddy sold his share to Ramreddy the brother of plaintiff No.1 under a registered sale deed. Laxma Reddy the father of first plaintiff has two sons i.e., the plaintiff No.1 and Ramreddy. There was a partition between the first plaintiff and his brother long back wherein Ramreddy got his share towards the north-eastern side, which fell to the share Laxmareddy and plaintiff No.1 got his share towards south-western corner. Since Ramreddy purchased in the name of his sons the share of Balkistareddy i.e., north-western bit he became entitled to Acs.7-35 guntas, which is to the north in the said survey number. Plaintiff No.1 became owner of half of the land in Survey No.814 on the southern side as he purchased the share of Kistareddy and already he had got the south-western bit in the partition. The first plaintiff gifted Ac.1-39 guntas in favour of second plaintiff and Acs.2-00 guntas in favour of third plaintiff from out of the land purchased by him from Kistareddy and his brothers and the said lands are on the south-eastern corner in the said survey number.

The defendant illegally encroached into Ac.0-21 guntas of land on the eastern side of plaintiffs 2 & 3 which they got under the gift deeds dated 25-07-2002. They submit that there is already a road passing through Survey No.834 abutting the suit survey number 814, but the defendant clandestinely during the night time on 26-11-2004 dumped gravel in the suit land for expansion of the road though he has no right to put up the road from the suit land, which does not belong to him, for which on 27-11-2004, the first plaintiff

objected, but the defendant threatened him and did not stop dumping gravel and hence filed the suit.

4. Defendant resisted the claim of plaintiffs and according to defendant, there is already existing road by the time defendant purchased Ac.01-02 guntas of land from Ramreddy and the said land was purchased only for the purpose of widening the road to have an access to their adjacent land and nearby industries and also to nearby Lambada Thandas. According to defendant, plaintiffs got only Acs.5-39 guntas and that their claim for Acs.7-36 guntas is not correct. According to defendant, the land mentioned in gift deeds is not in existence on the ground as referred in the gift deeds and the plaintiffs are not entitled for the relief of mandatory injunction.

5. On these contentions, trial Court examined two witnesses on plaintiffs side and marked five documents and also examined two witnesses and marked three documents on defendant side. On a over all consideration of oral and documentary evidence, trial Court accepted the claim of plaintiffs and decreed the suit and directed appellant to deliver vacant possession of the suit land and to restore it to its original position, within three months from the date of the decree. Aggrieved by the same, defendant preferred appeal to the District Court and V Additional District & Sessions Judge, Medak at Sanga Reddy, on a reappraisal of the evidence, dismissed the appeal, while confirming the decree

granted in favour of plaintiffs. Aggrieved by the same, present second appeal is preferred.

6. Heard both sides.

7. Though as many as 16 grounds are urged in the appeal, only Ground No.16 is in respect of substantial question of law. Even according to appellant as per Section 100 of CPC, only grounds concerning question of law, which is substantial in nature can be entertained in a second appeal. Therefore, I must refer to the grounds pleaded as substantial question of law which are as follows:-

“(a) Whether, in a suit for mandatory injunction, burden lies on the plaintiff to substantiate the title and ownership of the suit schedule property or burden lies on the defendant to substantiate ownership of the suit schedule property which is in their admitted possession?”

(b) Whether, in a suit for mandatory injunction, the court can decree the suit relying on the weakness of the defendant especially in the absence of reliable evidence from the plaintiffs substantiating the title and ownership?”

(c) Whether the findings and observations of the Courts below are contrary to the evidence and material on record especially contrary to the admissions made by the plaintiff (P.W.1) in cross examination?”

(d) Whether the plaintiff claiming as a General Power of Attorney Holder can maintain a suit without

bringing the alleged owner on record?

(e) *Whether the General Power of Attorney holder (plaintiff) can claim title and ownership independently in respect of the property mentioned in the alleged General Power of Attorney?"*

8. Now the point that would arise for my consideration in this revision is whether there is any substantial question of law to be decided by this Court in a second appeal?

9. **Point:-** Advocate for defendant argued at length and most of his submissions are in respect of factual aspects. Learned counsel for the appellant mainly contended that the trial Court decreed the suit on the basis of weakness in the case of defendant, but not on the basis of acceptable and reliable evidence produced on behalf of plaintiffs.

He submitted that both Courts mainly relied on the evidence of D.W.2, who is vendor of defendant for decreeing the suit and therefore those findings have to be treated as perverse.

He submitted that when the findings of the Courts below are perverse, this Court can entertain the second appeal treating those perverse findings as substantial question of law and for that proposition, he has referred to a ruling of the Supreme Court decided in **Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and others.**

In that case it is observed as follows:

"There is no prohibition on entertaining a second appeal even on a question of fact provided the Court is satisfied that the findings of fact recorded by the Courts

below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e., that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and causal manner by substituting its subjective satisfaction in place of that of the lower Courts.”

10. Advocate for plaintiffs contended that the law laid down by the Supreme Court with regard to perverse findings is not disputed, but there are absolutely no such findings either in the judgment of the trial Court or in the judgment of the first appellate Court, therefore, the contention of the appellant's counsel cannot be sustained.

11. Admittedly, D.W.2 is brother of P.W.1 from whom defendant purchased landed property. This witness has not supported the version of defendant. According to his evidence, one Kistareddy and his two brothers have shares in Survey No.814 and the lands sold to defendant is in Survey No.834. Though defendant contended that there was some exchange of land between Kistareddy and D.W.2., he has not supported that version. On the other hand, he assertively stated that there is no such exchange. Now the objection of the appellant is that the evidence of this witness, who is examined on behalf of defendant cannot be taken into consideration for accepting the plea of the plaintiffs, but the contention of the appellant cannot be accepted, because here D.W.2 is a witness examined on behalf of defendant and statement of a witness has to be read in whole while appreciating the contentions and rival

contentions of both parties. So the evidence of D.W.2 cannot be termed as a weakness in the case of defendant, on the other hand, it is the positive evidence produced by defendant. As per the Evidence Act, if a witness makes a contra statement to the plea of the party on behalf of whom, such witness is examined, the remedy of the party, who examined such witness is to seek the permission of the Court to treat such witness as a hostile witness and then cross-examine such witness. But here the defendant has not taken any such steps and allowed that evidence to be remained on record. Having not taken such steps available under the Evidence Act, it is not open to the defendant, to now contend that it is a weakness in the case of the defendant. Advocate for appellant referring to this aspect only contended that the findings of trial Court and appellate Court in respect of D.W.2 has to be termed as perverse. But the contention of the appellant's counsel cannot be accepted, particularly when defendant having not availed the remedy under the evidence Act cannot be permitted to contend and comment about the evidence of their own witness D.W.2. Therefore, the contention of the appellant that the Courts below decreed the suit on the basis of weakness in the defendant's case cannot be sustained.

12. The other grounds contended are according to first plaintiff, he purchased land from Kistareddy and Ranga Reddy through G.P.A, but such G.P.A is not filed, therefore, the findings in respect of that contention have to be treated

as perverse. But as seen from the pleadings, the defendant has not questioned purchase of land by first plaintiff and when he contended that the suit property is part of the land purchased from D.W.2 & Ex.B1 and that contention was not supported by D.W.2, the objection with regard to non-production of G.P.A is not sustainable. In fact, the trial Court and appellate Court have elaborately considered this point and rightly discarded the objection and the findings of the trial Court and appellate Court are based on sound reasoning and they cannot be treated as perverse. Further, from the evidence of D.W.2, he has got land only in Survey No.834 and he categorically stated that defendant is nothing to do with Survey Number 814. Admittedly, the disputed land is in Survey No.814, when there is no right for the defendant in this survey number, claim of the defendant on the property in such survey number cannot be sustained.

13. One of the contentions of the defendant is that there is a existing road, but as seen from the recitals of the sale deed in favour of defendant, there is no such road as contended by defendant. Much is argued about the evidence of D.W.2. It is submitted that there is a collusion between first plaintiff and D.W.2, but there is no material to support the said argument. On the other hand, evidence on record would disclose that D.W.2 and first plaintiff are not in good terms. On a scrutiny of the entire material, plaintiffs have discharged their burden in establishing that the suit property belong to them and the defendant encroached into the same

and laid a road and therefore, plaintiffs are entitled for the relief of mandatory injunction and both the Courts have rightly granted such relief.

As seen from the material, I am of the view that there are absolutely no grounds to interfere with the concurrent findings and the above referred grounds do not involve any question of law, they are only in respect of factual aspects and there is no question of law involved in this case leave alone substantial question of law.

14. For these reasons, I am of the view that the second appeal is devoid of merits and liable to be dismissed.

Two months time is granted to the appellant to comply the direction of trial Court.

15. Accordingly, Second Appeal is dismissed with costs and as a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:04.02.2015

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