

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL No.1171 of 1998

JUDGMENT:-

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This Second Appeal, under Section 100 of C.P.C., is filed by the unsuccessful defendants 1 to 5, assailing the decree and judgment dated 08.07.1998 of the learned Additional District Judge, Madanapalle, Chittoor District, passed in A.S.No.85 of 1991, whereby, the learned Additional District Judge, while dismissing the aforementioned appeal, had confirmed the decree and judgment dated 30.09.1991 of the learned First Additional District Munisif, Madanapalle of Chittoor District, passed in O.S.No.136 of 1987 filed for mandatory injunction for the removal of constructions raised by the defendants in the plaint 'B' schedule property and for perpetual injunction restraining the defendants, their men and agents from making any constructions in the plaint 'B' schedule property and for costs.

2. I have heard the submissions of the learned counsel for the appellants/defendants 1 to 5 and the learned counsel for the respondent/plaintiff. I have perused the material record. The parties in this appeal shall hereinafter be referred to as plaintiff and defendants for convenience and clarity.

3. At the time of admission of this second appeal, this Court has taken note of the substantial questions of law mentioned in Ground Nos. 7 to 9 of the grounds of appeal, which are as follows:-

7. *Whether the decision of the Courts below that there can be an injunction against a co-owner is sustainable?*
8. *Whether the decision of the Courts below in relying upon the Commissioner's report which has been neither proved nor marked to form part of the record?*
9. *Whether the decision of the Courts below is sustainable?*

4. During the course of hearing, the learned counsel for the

appellants/defendants 1 to 5 would submit that the defendants 1 and 7 had filed a written statement specifically contending that plaint 'B' schedule property is not a joint property between the plaintiff and the defendants and that the sites shown behind the ABCD shop rooms belonged to the respective owners of ABCD shop rooms and that in respect of the above schedule property, there was a mediation before the elders whose names are mentioned in the written statement and that in the mediation before the named elders, it was agreed and decided that the defendants should pay Rs.1,500/- to the plaintiff and the plaintiff should not claim any right over the site behind the shop rooms of the defendants and that the respective parties should enjoy the site situated behind their respective rooms and that the plaintiff has admitted the said fact in the complaint lodged by him with the police and that there is no water in the well at any time and even as on the date of the trial and there is also no hope of getting water from the said well and therefore it was agreed that the plaintiff should also contribute Rs.500/- for closing the well so that defendants 6 and 7 could construct buildings and that contrary to all the facts and settled matters, the plaintiff has filed a false suit and that the defendants 1 to 5 have constructed their shop room in the place marked 'A' and in the site behind the portion marked as 'A' about five years prior to the suit and the plaintiff has never raised any objection for the same and that the plaintiff is estopped by his conduct and that the defendants had established their defence that the 'B' schedule property is not a joint property and that the Courts below had grossly erred in holding that there can be an injunction against a co-owner and that the Courts below failed to take note of the fact that every co-owner is entitled to use the joint property without detriment to the interests of the others and that the Courts below ought to have seen that even if the property is joint, the constructions made are in no way affecting the right of the plaintiff and that the constructions are done with consent and approval and that the Courts below grossly erred in relying

on Commissioner's report which was neither marked nor proved and was not made a part of the record and that the findings that there can be an injunction against a co-owner is unsustainable and that the reliance placed by the Court below on the Commissioner's report which is neither marked nor proved and which is not a part of the record amounted to considering material which is not valid evidence and that, therefore, the appeal may be allowed.

5. Per contra, the learned counsel for the sole plaintiff while supporting the decrees and judgments of the Courts below had contended that the plaintiff brought sufficient evidence that plaint 'B' schedule property is a joint property and that there is a Well in the said property and that from that Well all the sharers to whose shares shop rooms are allotted are entitled to draw water by laying pipes and fixing motor and that anybody has no right to cause obstruction for ingress and egress into the joint property which is behind the shop rooms of the sharers and that detailed schedules and a sketch are also filed with the plaint showing the topographical details of the properties and that the plaintiff had also produced the original sale deed exhibit A1-dated 11.02.1963 executed by Subramanya Iyyar in favour of the plaintiff and other vendees and that the plaintiff had also filed exhibit A3-registered partition deed dated 17.07.1991 executed between plaintiff, P.Venkata Ramanayya Setty, R.L.Setty and R.B. Gupta showing the allotment of shares to various sharers and the existence of lane admeasuring 5 feet x 35 feet which was kept joint with 1/4th joint share each to the sharers respectively owning the shop rooms ABCD and that in the partition the 'B' schedule is kept joint as the Well intended for drawing water was situate therein and that joint property is essential for ingress and egress to the properties of others and that the Courts below having regard to the oral and documentary evidence had recorded well reasoned findings and that when one of the sharers attempts to make constructions in a joint

property, which is to be kept vacant, certainly the civil Court is competent to injunct such party from making constructions and prevent injury to the aggrieved plaintiff who has got a right to use the Well for drawing water besides the right of ingress and egress to the property and that the Court below had also considered the Commissioner's report and the fact that 'B' schedule property is incapable of partition and that if the mandatory injunction is not confirmed and the constructions illegally and highhandedly made are not directed to be removed, the plaintiff would suffer serious and irreparable loss and that there is no merit in the second appeal and that some of the defendants did not join the appellants in preferring the appeal would also show that the appeal is preferred to drag on the matter and harass the plaintiff and that no substantial questions are involved in the appeal and that the appeal is liable to be dismissed.

6. After full fledged trial and on merits, the trial Court decreed the suit of the plaintiff and while granting mandatory injunction granted time to the defendants to demolish the constructions made by them in plaint 'B' schedule property and further gave liberty to the plaintiff to get the constructions removed there from in accordance with the procedure established by law, on the failure of the defendants to do so. The said decree and judgment of the trial Court were confirmed by the Court below. Therefore, the aggrieved defendants 1 to 5 are before this Court.

7. A reading of the substantial questions of law would show that the questions raised as substantial questions of law are only mixed questions of fact and law and not even pure questions of law.

8. Be that as it may, the learned counsel for the appellants would submit that now all the owners of the properties are making fresh constructions over the land and that therefore, no cause for adjudication survives in this second appeal and that, therefore, the second appeal

may be disposed of recording the said submission. The learned counsel for the plaintiff did not dispute the said submission.

9. Recording the submission of the learned counsel for the appellants that no cause survives for adjudication in this second appeal, this second appeal is disposed of accordingly. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

11th June, 2015

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