

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

**SECOND APPEAL No.936 of 2010**

**Date:10.04.2015**

**Between:**

Mohd. Azeemuddin and others.

... Appellants.

AND

K. Punna Rao and others.

...Respondents.

The Court made the following :

**THE HON'BLE SRI JUSTICE S. RAVI KUMAR**

**SECOND APPEAL No.936 of 2010**

**JUDGMNET:**

This appeal is preferred against judgment dated 07-04-2009 in A.S.No.29/2006 on the file of I Additional District Judge, Adilabad whereunder judgment dated 03-06-2006 in O.S.No.29/1997 on the file of Additional Senior Civil Judge (Fast Track Court), Luxettipet is confirmed.

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

Appellants herein are unsuccessful plaintiffs who filed the above suit for declaration of title over Ac.0-02 guntas of

land in Survey No.208 of Mancherial and for consequential permanent injunction. In the trial Court, two witnesses are examined and 28 documents are marked on behalf of plaintiffs and two witnesses are examined and 27 documents are marked on behalf of defendants and on a over all consideration of oral and documentary evidence, trial Court dismissed the suit. Aggrieved by which, plaintiffs preferred appeal to the District Court and First Additional District Judge Adilabad, on a reappraisal of evidence, confirmed the findings and judgment of the trial Court. Now aggrieved by the same, present second appeal is preferred and the following are the substantial questions of law that are raised in the grounds of appeal:-

*“Whether the Courts below are correct in fixing the burden of proof of on the appellants in a suit for recovery of possession based on title and when the respondents have set up title independently denying the title of the appellants?*

*Whether the Courts below are correct in giving finding as to adverse possession in the absence of specific plea as to date of commencement of adverse possession and issue framed in that regard?*

*Whether the judgment and decree of the Courts below are vitiated under the law for non consideration of material evidence Hameed has no title to the land in Sy.No.208?*

*Whether the Courts below are correct in dismissing the suit when the appellants have established title of Mohd. Khairuddin in Sy.No.208 and thereafter title of appellants through Ex.A-1 and that the judgment of Courts below are not perverse?*

*Whether the finding of Courts below are not*

*perverse in holding that property tax receipts are evidence of title and Courts below are correct in holding that the respondents have established title by producing Ex.B-11 to B-24?”*

3. This Court admitted the second appeal by formulating the following is the substantial question of law “*whether both the Courts below were justified in holding that the suit of the plaintiffs is barred by limitation.*”

4. Heard both sides.

5. Advocate for appellants contended that both trial Court and appellate Court failed to discuss about TP-24, which clearly supports the claim of plaintiff. With regard to limitation aspect, Advocate for appellants submitted that best piece of evidence was not considered by the trial Court and appellate Court and the findings of the Courts below on limitation aspect is incorrect. Learned Advocate for appellants also argued at length touching the factual aspects including results of non-examination of attestor of document, so also with regard to pleadings particularly plea of adverse possession and also about the difference between proof of document and marking of document and evidentiary value of entries in the revenue record. He even referred to some rulings touching these aspects. On the other hand, other side contended that no substantial question of law is involved and the only point that has to be considered by this Court is with regard to limitation and both Courts concurrently

held this aspect against the plaintiffs and the Courts below have rightly applied the law to the facts and that there are no grounds to interfere with the same. He further submitted that the arguments of the appellants with regard to difference between marking of documents and proof of documents, burden of proof, evidentiary value of entries in the revenue records etc., are only on factual aspects and both trial Court and appellate Court have considered these aspects and concurrently held against the plaintiffs, therefore, those aspects cannot be reopened now in the second appeal.

6. Now the point that would arise for my consideration in this second appeal is whether the findings of the Courts below on limitation aspects are correct and tenable?

7. **Point:-** As seen from the material, the suit was initially filed for relief of declaration of title and injunction and subsequently prayed for recovery of possession. So when the plaintiffs claim recovery of possession on the basis of title, burden is on them to prove it with cogent and convincing evidence. The total extent of land covered in Survey No.208 is Acs.14-39 guntas, but available land is only Acs.14-27 guntas. In this case, plaintiffs contended that defendants illegally occupied the suit land on 25-08-2005, whereas the claim of defendants is that they have purchased suit site from their vendor Syed Abdul Hameed under sale deeds Exs.B1 to B3 in the year 1997 and since then, they are in possession and enjoyment of the suit

property as absolute owners. As already referred above, initially the suit is filed for declaration of title and injunction, but subsequently, amended for the relief of recovery of possession. According to plaintiffs, an extent of Acs.04-39 guntas in Survey No.208 fell to their share and to substantiate the same, they have relied on evidence of P.W.1 and documents Exs.A1 to A14. When plaintiffs claim that they are owners of plaint schedule property, burden is on them to show that the plaint schedule property is part and parcel of this Acs.04-39 guntas in Survey No.208, but the evidence on record would show that they have alienated the entire land long ago and when such is the case, the burden is heavy on them to show that after alienating the property, still this plaint schedule property remained with them, which is part and parcel of Acs.04-39 guntas. Both trial Court and appellate Court held that plaintiffs have failed in proving that the suit land is remained, after alienation of land and that the defendants have forcibly occupied it on 25-08-2005.

8. On the other hand, the evidence on behalf of defendants established that they are in possession and enjoyment since the date of purchase in the year 1997 and prior to that, their vendors were in possession and enjoyment and the tax receipts from the year 1980 onwards are produced and exhibited during trial. So when the evidence on record has disclosed that the possession is not with the plaintiffs since 12 years prior to the filing of the suit, the trial Court and appellate Court held that the claim is also

barred by limitation. As rightly contended by Advocate for defendants, when the plaintiffs failed to establish their title and the allegation that defendants forcibly occupied suit property on 25-08-2005, they are not entitled for the relief of declaration and possession. Though the period of limitation is not very much relevant, but as there is specific issue framed by the trial Court with regard to limitation, trial Court has considered evidence on record to verify whether the plea of the plaintiffs with regard to possession is correct or not and from evidence, it was established that plaintiffs were out of possession even 12 years prior to the filing of the suit and on that ground, that issue was held against plaintiffs. I do not find any wrong appreciation of evidence or wrong application of law either by trial Court or appellate Court, particularly with regard to period of limitation and the objection of the plaintiffs on this score is not at all tenable.

9. As already referred above, Advocate for appellants has raised many points touching burden of proof, difference between marking of document and proving of document and evidentiary value of entries in revenue records with reference to case law on the subject, but those points are no way relevant for the point formulated by this Court at the time of admission of the second appeal, therefore, as rightly objected by the other side, those aspects require no consideration.

10. On a scrutiny of the entire material on record, I am of

the considered view that both trial Court and appellate Court have not committed any error either in appreciating the factual aspects or legal aspects and that no substantial question of law is involved and that the appeal is devoid of merits.

11. For these reasons, Second Appeal is dismissed with costs and as a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

No costs.

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***JUSTICE S. RAVI KUMAR***

**Date:10.04.2015**

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