

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL No.993 of 2012

JUDGMENT:

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The unsuccessful defendants had preferred this appeal under Section 100 of the Code of Civil Procedure ('the Code' for brevity) assailing the decree and judgment dated 06.03.2012 of the learned IX Additional District Judge (Judge, Fast Track Court), Ranga Reddy in AS.No.156 of 2009 whereby the learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 30.03.2009 of the trial Court in OS.No.1764 of 2003.

2. I have heard the submissions of the learned counsel for the appellants/defendants. I have perused the material record.

3. The plaintiffs/respondents brought the aforementioned suit against the defendants for a perpetual injunction *inter alia* contending that they are the owners and possessors of agricultural dry land admeasuring 28 guntas in S.No.97 situate at Jillelaguda [more fully described in the schedule annexed to the plaint] having purchased the same from their vendors on 13.08.1990 under exhibit A1-registered sale deed executed by the general power of attorney holder of the vendors; and, that since then they were and are in continuous possession and enjoyment of the same; and, that they were also issued pattadar pass books under exhibits A4 to A6 for the respective extents; and, that the Mandal Revenue Officer concerned had also passed an order of mutation in their favour under exhibit A3; and, that pursuant to the mutation proceedings their names were also entered in revenue records; and, that exhibits A7 to A10, the certified copies of pahanies, establish their possession; and, that the defendants have nothing to do with the suit schedule property; and, that when the defendants had tried to trespass and interfere with their possession, they are constrained to file the suit for perpetual injunction.

4. The defendants in their common written statement while denying the ownership and possession of the plaintiffs as pleaded in the plaint had *inter alia* contended that the defendants had purchased the land in an extent of Ac.0.17 guntas in survey no.97 under exhibit B1 registered sale deed dated 28.12.1994 from the legal heirs of one late Sula Ramaswamy, who is the original pattadar; and, that the khasra pahani for the year 1954-1955, which is a valid title document in the absence of any other document, would show that though the property originally belonged to three persons namely Sula Ellaiah, Sula Chandraiah and Sula Ramaswamy, out of the said three persons, late Sula Ramasway has got half share of 33 guntas in S.No.97 (new 104); and that, therefore, the predecessor of their vendor Ramaswamy has got a half share; and hence, the plaintiffs' vendor has got title only to the extent of Ac.0.11 guntas in the said property covered by khasra pahani; and that, therefore, the plaintiffs' vendor has no title to convey Ac.0.28 guntas; and, that the sale deed of the plaintiffs insofar as the extent in excess of 11 guntas is void; and, that the defendants are admittedly having some other land adjacent to the land being claimed by the plaintiffs; and, that their land was leased out by the defendants to one Srinivas Reddy; and, that the said tenant is running a brick kiln and is quietly enjoying the property by paying rent of Rs.1,000/- per month; and, that the entire extent under exhibit B1 is in physical possession and enjoyment of the defendants through their said tenant.

5. Having regard to the said pleadings the trial court had framed the following issues.

1. Whether the plaintiffs are in possession of the suit schedule property?
2. Whether the plaintiffs are entitled for perpetual injunction as prayed for?
3. To what relief?

6. At trial, the 2nd plaintiff and a supporting witness were examined as PWs1 and 2 and the documents, the details of which are referred to above, were exhibited as exhibits A1 to A11. On the side of the defendants, the 2nd

defendant and a supporting witness were examined as DWs1 and 2 and apart from exhibit B1-sale deed, exhibit B2 notice issued by the MRO and exhibit B3-the certified copy of khasra pahani for the year 1954-55 were exhibited.

7. On merits, the trial court had decreed the suit of the plaintiffs. The appeal preferred by the defendants was dismissed confirming the decree and judgment of the trial Court.

8. Having been aggrieved of the concurrent findings of the Courts below, the defendants having preferred this appeal had *inter alia* contended that the suit is only a suit for perpetual injunction and that the documents filed would show that the title of the plaintiffs is not clear insofar as the entire extent of land purchased by them under exhibit A1 and that the documents filed do not show that there was any partition between the three persons whose names are mentioned in the khasra pahani and that the Courts below had failed to treat exhibit B3-khasra pahani as a title deed in the absence of any other document and that PW1 had admitted in his cross examination that the appellants/defendants have let out the suit property for running a brick kiln and that there is a serious dispute about title to the extent of 28 guntas being claimed by the plaintiffs and that the mutation proceedings are under challenge before the revenue authorities and that the same have not become final and that mutation proceedings do not confer title and that in the absence of proof of incidental title to the entire extent of 28 guntas and lawful possession of the plaintiffs over the said land and on the contrary in the face of the sale deed-exhibit B1 of the defendants, both the Courts erred in not accurately considering the facts and appreciating the evidence and that, therefore, the said decrees and judgments of the courts below are liable to be set aside. The learned counsel for the appellants would also contend that the Courts below had grossly erred in granting a decree for perpetual injunction in favour of the plaintiffs when the plaintiffs' title to the property is not properly explained and proved and when the khasra pahani, which was filed by the defendants and which is a document of title in itself in the absence of any other document of title; and, that the non consideration of the khasra pahani,

which is a document of title in the absence of any other document, and the grant of perpetual injunction in favour of the plaintiffs in the absence of clear title of the plaintiffs to the property do constitute substantial questions of law and that, therefore, the said substantial questions arise for consideration in this second appeal.

9. I have carefully perused the pleadings and the judgments of the Courts below. I have noted the submissions.

10. PW1 having deposed in line with the pleaded case and having exhibited exhibits A1 to A11 had asserted his incidental title to the suit schedule property and also lawful possession. In the well considered view of this Court, the evidence of PW1, which is well corroborated by exhibits A1 to A11, and the evidence of the supporting witness-PW2, who deposed about the purchase of property by the plaintiffs in the year 1990 and their possession, sufficiently established the case of the plaintiffs; and, the said evidence discharged the initial onus of proof, which is upon the plaintiffs. On the onus to introduce evidence shifting to the defendants, the defendants had reiterated their case through the evidence of DW1. Admittedly, the defendants are not disputing exhibit A1 sale deed and the title of the plaintiffs to the extent of 16.5 guntas under the said sale deed, which is of the year 1990 and which is prior in point of time to the sale deed of the defendants under exhibit B1, which is of the year 1994. Exhibit A1 on a perusal would reveal that all the plaintiffs had jointly purchased the plaint schedule property and that the vendors therein are respectively entitled to 11 guntas, 6.5 guntas and 10.5 guntas and that together they are entitled to 28 guntas in all in S.No.97. Subsequent to their purchase, the plaintiffs 1 to 3 had obtained separately pattadar pass books in their respective names for their respective extents under exhibits A4 to A6; and, the MRO had also granted an order of mutation in the year 2001; and, the exhibits A7 to A10, the copies of pahanies, also evidence the possession of the plaintiffs over the suit land. Though the said mutation proceedings are under challenge, as on today, they are not set aside. Neither the vendors of the defendants nor the defendants had challenged the sale deed of the year 1990 before 1994 though

admittedly the defendants are having land adjacent to the plaint schedule land; and, therefore, it cannot be said that they are not aware of the sale deed of the plaintiffs under exhibit A1. Even though DW2 was examined to corroborate the version of DW1, a perusal of the evidence of DW1 would show that he is not aware of the plaintiffs obtaining pattadar pass books and the mutation proceedings in their favour. When the plaintiffs filed their title deed and proved their lawful possession by filing the pass books, the mutation proceedings and the copies of the pahanies, the contention that there is only khasra pahani and that in the absence of any other document of title, the khasra pahani assumes importance cannot be countenanced. Further, as already noted, the document of title of the plaintiffs being prior in point of time to the document of title of the defendants must be given its due weight. For all the reasons and the reasons assigned infra, the contentions of the defendants do not merit consideration in this second appeal and the questions raised which are questions of fact do not constitute substantial questions of law. Be that as it may. Though the defendants had claimed that the property was leased out and that their tenant by name Srinivas Reddy is in possession and that he is running a brick kiln and that the defendants are thus in possession through the said tenant, the defendants had not examined the said Srinivas Reddy, who is a material witness. Therefore, except the mere assertion that there is a change of survey number from 97 to 104 without any foundation in the pleadings and that the plaintiffs' vendor has no title to the entire extent of land, no evidence worth taking note was adduced by the defendants to rebut or dislodge the evidence of the plaintiffs so far as their lawful possession is concerned, which is a material feature in this suit for perpetual injunction. The Courts below had recorded cogent and well reasoned findings having regard to the pleadings and the evidence brought on record. Therefore, this Court on an analytical examination of the material record finds that the Courts below had accurately considered the facts and further appreciated the evidence in proper perspective and that there is neither misreading nor non consideration of material evidence and that, therefore, no substantial questions of law arise for exercising jurisdiction under Section 100 of the Code. Viewed thus, this Court finds that there are no

grounds made out to upset the concurrent findings of the Courts below.

11. In the result, the Second Appeal is dismissed at the admission stage as no substantial questions of law are involved. No costs.

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

JUSTICE M. SEETHARAMA MURTI

23rd June,, 2015

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