

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.79 of 2015

Dated 26-11-2015

Between:

Mandava Srisailam and another.

...Petitioners.

And:

Panjala Ramanjaneyulu and another.

...Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.79 of 2015

JUDGMENT:

This appeal is preferred challenging the judgment and decree dated 26-8-2014 in A.S.No.11 of 2011 on the file of Senior Civil Judge, Bhongir wherein judgment dated 1-2-2011 in O.S.No.363 of 2006 on the file of Principal Junior Civil Judge, Bhongir is confirmed.

Appellants herein are unsuccessful defendants in the suit. Respondents herein filed O.S.No.363 of 2006 seeking perpetual injunction in respect of suit schedule property i.e., house plot bearing No.12/33 in S.No.596 admeasuring 451 square yards situated in Bibi Nagar village. Trial court after examining two witnesses on plaintiffs' side and two witnesses on defendants' side and on considering Exs.A.1 to A.8 on plaintiffs' side and Exs.B.1 to B.9 on defendants' side held that plaintiffs are entitled for the relief of injunction as prayed for. Aggrieved by the said decree and judgment, defendants preferred appeal to the Senior Civil Judge, Bhongir who on a reappraisal of both oral and documentary evidence confirmed the decree granted in favour of plaintiffs holding that they are in possession of the suit schedule property i.e., plot No.12/33. Aggrieved by the same, present Second Appeal is preferred.

Heard arguments.

Advocate for appellants submitted that when defendants specifically pleaded that there is no existence of plot No.12/33 and that the plaintiffs' vendor has no title over the land in S.No.596, the court without insisting plaintiffs to go for declaration, allowed the plaintiffs to

continue the suit for injunction and the same is illegal. He further submitted that both courts are not justified in decreeing the suit when there is no existence of plot No.12/33 even as per the documentary evidence produced by both parties. He further submitted that a decree of perpetual injunction cannot be granted on the weakness of the defendants' case and it is for the plaintiffs to prove both title and possession and both courts have not examined this aspect and erred in granting decree and therefore, second appeal is maintainable.

On the other hand, advocate for plaintiffs submitted that appellate court specifically gave finding that plot No.12/33 is different from plot No.33/A and 33/B and that plaintiffs have got title over the suit schedule property and as plaintiffs proved their possession, granted injunction and that there is no substantial question of law to entertain the second appeal.

According to appellants, following are substantial questions of law.

*A) Whether the plaintiffs are entitled for perpetual injunction when there is no plot with plot No.12/33 is existing on the spot in Sy.No.596?*

*B) Whether the courts below are justified in decreeing the suit of the plaintiffs suit plot bearing No.12/33 is not at all existing on the spot even as per the link documents, relief upon by the respondents/plaintiffs?*

*C) Whether the plaintiffs are entitled for perpetual injunction, when there is lot of variance in the suit plot and the plot existing on the western side in the two link documents filed by the plaintiffs?*

As rightly pointed out by advocate for plaintiffs, all these grounds are on factual aspects and not touching any law. As per Section 100 of C.P.C., Second Appeal has to be admitted only where a substantial question of law is involved but here as seen from the grounds, no law is involved leave alone substantial question of law and all the grounds urged as substantial question of law are on factual aspects and therefore, this second appeal cannot be entertained.

Accordingly, this Second Appeal is dismissed at the admission stage. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

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JUSTICE S.RAVI KUMAR

Dated 26-11-2015.

Dvs.

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