

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.832 of 2015
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JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful plaintiff is directed against the judgment and decree dated 19.08.2015 of the learned IV Additional District Judge (Judge, Fast Track Court III), Khammam whereby the learned Additional District Judge while dismissing the said first appeal suit had confirmed the judgment and decree dated 01.06.2009 of the learned Senior Civil Judge, Khammam passed in OS.No.198 of 2002 filed for a perpetual injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of Southern and Western portions of the building bearing no.2-2-35 and 36 situate in a site of an extent of 2000 Square yards in Gandhi Chowk, Khammam bearing house no.2-2-35 more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned counsel for the appellant/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondent/defendant ('the defendant', for brevity). I have perused the material record.

3. The learned counsel for the plaintiff would contend that the plaintiff proved exhibit A1-partition deed whereunder the plaint schedule property was allotted towards his share in a family partition and also his lawful possession over the said property as on the date of the filing of the suit by exhibiting exhibits A6 to A13 and that the Courts below ought to have seen that in a suit for perpetual injunction simpliciter the plaintiff has to prove his possession over the suit schedule property and also the interference with such settled possession of the plaintiff by the defendant and that the plaintiff had established not only his possession but also the cause of action, which lead to the filing of the suit, and that the Courts below ought to have properly

appreciated the evidence of PW1, who is the mother of the plaintiff and also the evidence of PW2-the plaintiff and that of the PW6 and DW5, who were erstwhile and present tenants respectively in the plaint schedule property and that the Courts below ought to have seen that the plaintiff having claimed possession through the said tenants had established lawful possession as required under law and, therefore, the Court below ought to have decreed the suit of the plaintiff as prayed for.

3.1 While so contending, the learned counsel for the plaintiff would submit that the following substantial questions of law are involved and, therefore, the appeal deserves admission and disposal on merits.

- 1. Whether the judgments of the court below are vitiated in not considering the principle that in a suit for injunction possession over the property is necessary on the day of filing of the suit?**
- 2. Whether the judgments of the Courts below are vitiated in not considering the Exs.A1, A6 to A13 in a proper manner?**
- 3. Whether the judgments of the Courts below are vitiated in not considering the evidence of PW1, PW6 and DW5 in a proper manner?**

[Reproduced verbatim]

4. On the other hand, the learned counsel for the defendant having supported the concurrent findings in the judgments of the courts below had stated that none of the questions raised are pure questions of law and that the questions raised are only a blend of facts and law and that no substantial questions of law are involved and that there is no necessity to interfere with the decrees and judgments of the courts below, which are rendered after recording concurrent findings supported by cogent and valid reasons.

5. Now this court has to examine as to whether or not any substantial questions of law are involved in this second appeal and whether the second appeal deserves admission for disposal on merits or is liable to be dismissed at the stage of admission.

6. Before proceeding further, it is necessary to state briefly the cases of both the parties, which are relevant for consideration.

6.1 The case of the plaintiff, in brief, is this:

The plaintiff's father P.Rajagopalam who is a businessman, had purchased the plaint schedule property in the name of his mother Annapurnamma in a Court permitted private sale on 12.09.1962. Later his father had demolished the country tiled house bearing no.5-2-56/57 existing in the said property and had constructed a Madras terraced house. Later, the grandmother of the plaintiff-Annapurnamma had executed a registered Will bequeathing the property in favour of Yasodamma, the plaintiff's mother. The plaintiff's father has got four sons including the plaintiff and five daughters including the sole defendant-Prasannalakshmi. In a family partition all the properties of the father of the plaintiff including the plaint schedule property were partitioned on 13.07.1991 under an unregistered partition deed. In that partition, the plaint schedule property fell to the share of the plaintiff. Therefore, he is in possession of the same. The plaintiff had paid Rs.46,250/- to his brother Satyanarayana in lieu of his share at the time of partition. After becoming the owner and possessor of the property by virtue of the partition, the plaintiff is enjoying the property as absolute owner by paying electricity consumption charges. The plaintiff had leased out the property to tenants viz., Veeraiah and another. The sole defendant herein is the sister of the plaintiff. The husband of the defendant came to Khammam about ten days prior to the filing of the suit and asked the tenants Kandukuri Veeraiah and B. Anantha Rao, who are in occupation of the property, to vacate the property and threatened them with dire consequences and had obtained their signatures forcibly, on some papers even though they have stated that they are not going to vacate as they are the tenants of the plaintiff. Later the defendant had lodged a caveat petition claiming the property through a Gift Deed said to have been executed by Yasodamma, the mother. Therefore, the plaintiff is constrained to file the suit for perpetual injunction.

6.2 The defence of the defendant is that the plaint schedule property is the

Streedhana property of Annapurnamma and that the partition deed, which is unregistered is a fabricated document and that Annapurnamma during her life time had executed a Will deed in favour of her daughter Yasodamma and that Yasodamma had leased out the property to various tenants and that this defendant is the youngest daughter of her parents Rajagopalam and Yasodamma and that when the mother Yasodamma was suffering with ailments, the brothers and the other sisters of the defendant did not bother to take care of the mother and her welfare and, therefore, the defendant had taken care of her mother and hence, out of love and affection, her mother- Yasodamma had executed a registered gift deed dated 19.07.2002 in her favour in respect of the plaint schedule property and that by virtue of the said gift deed the donee has become the absolute owner of the plaint schedule property and that the tenants K. Veeraiah and Anantharao, who were in occupation of the property became the lessees of the defendant after the Gift Deed and that the said tenant K. Veeraiah, who was in occupation of the Western side portion of the building had executed a rental agreement in favour of the defendant on 01.08.2002 but, the other tenant Anantharao did not execute any rental agreement under the pressure of the plaintiff, though the defendant had requested him to do so, and that when the plaintiff had persistently asked the said Anantharao to pay rents, he had vacated the premises and that by virtue of the Gift Deed, the defendant is the owner and lawful possessor of the property and hence, the suit for perpetual injunction is not maintainable and is liable for dismissal.

6.3 Having regard to the pleadings, the trial court had framed the following issues.

1. **Whether the suit schedule house property was in possession of plaintiff on the date of suit?**
2. **Whether the plaintiff is entitled for permanent injunction as prayed for?**
3. **To what relief?**

6.4 At trial, on the side of the plaintiff, PWs1 to 6 were examined and exhibits A1 to A18 were marked. The defendant and her supporting

witnesses were examined as DWs1 to 8 and exhibits B1 to B20 were marked on the side of the defendant.

6.5 On merits, the trial Court had dismissed the suit of the plaintiff. The first appeal suit preferred by the plaintiff was also dismissed. Hence, the unsuccessful plaintiff had preferred this second appeal.

7. To begin with, the plaintiff *inter alia* claims that his father had purchased the property nominally in the name of his grandmother Annapurnamma in a Court permitted private sale on 12.09.1962 and that his grandmother Annapurnamma had executed a registered Will deed dated 02.02.1976 and bequeathed the plaint schedule property to his mother Yasodamma and that the suit schedule property and other properties are the family properties of the plaintiff's father Rajagopalam and that a partition took place on 13.07.1991 and that under the said partition the plaint schedule property fell to the share of the plaintiff and, therefore, he became the absolute owner of the plaint schedule property and that he is paying electricity consumption charges and that he had leased out the property to Veeraiah and another tenant, Anantha Rao, and that he is in possession of the property through the said tenants and that the evidence of one of the tenants-PW6 and the exhibit A1 partition deed and exhibits A6 to A13 prove the lawful possession of the plaintiff.

7.1 The fact borne out by the evidence brought on record is that Annapurnamma treated the property as her self acquired property and had executed a Will under the original of exhibit B2(=A3) dated 02.02.1976 in favour of her daughter Yasodamma. However, the plaintiff claimed that the plaint schedule property was also one of the properties which were subject matter of a partition among his father, brothers and sisters on 13.07.1991 and placed reliance on unregistered partition deed/exhibit A4 dated 13.07.1991. Both the Courts below have concurrently held that exhibit A1 partition deed, which is unregistered and unstamped is inadmissible in evidence and, therefore does not confer any rights on the plaintiff and that the same does not defeat the rights of Annapurnamma and Yasodamma as the property was originally purchased by Annapurnamma in a Court permitted private sale in

the year 1962 under exhibit A2 and as Annapurnamma had further bequeathed her property to her daughter Yasodamma by virtue of a registered Will deed under the original of exhibit B2(=A3). The Courts below have found that the recitals in exhibit A2 sale deed in favour of Annapurnamma would show that the property was brought to sale in E.P.22 of 1957 and that Annapurnamma paid the sale consideration of Rs.13,000/- by remitting the same to the credit of the EP and that the contention of the plaintiff that the plaintiff's father had purchased nominally the property in the name of Annapurnamma is not correct. Further, Annapurnamma by treating the property as her property, had bequeathed the property under registered Will to her daughter Yasodamma. Therefore, it was further held that Yasodamma got the suit property under exhibit B2 (=A3) Will executed by Annapurnamma. Therefore, the plea of partition was held not proved by the Courts below by recording a concurrent finding of fact well supported by reasons. Be that as it may. Yasodamma, the mother of the plaintiff by virtue of a registered gift deed dated 19.07.2002 under the original of exhibit B1 had gifted the property to the defendant, who is no other than her daughter. In spite of the fact that a caveat was lodged by the defendant claiming ownership over the property through the said gift deed executed by her mother Yasodamma, the plaintiff brought the suit for bare perpetual injunction simpliciter without seeking cancellation of the gift deed on any ground and did not seek declaration of title.

7.2 In the said facts and circumstances, the learned counsel for the plaintiff would contend that in a suit for perpetual injunction the burden is on the plaintiff to prove his possession as on the date of the suit and that the plaintiff had proved his lawful settled possession through the tenants under him and that even if the gift deed is true and valid since plaintiff is in possession of the property through his tenants, the defendant has to recover possession of the property by having recourse to law and that till such time the plaintiff is entitled to a perpetual injunction as prayed for.

7.3 Coming to the contentions as to whether plaintiff established his possession as being claimed, as already noted, exhibit A1 which is

inadmissible and which is discarded by the Courts below for valid reasons is of no avail to the plaintiff to prove his lawful possession over the plaint schedule property. Both the courts below analysed the evidence of the two tenants PW6 and DW5 and had held that the plaintiff could not establish that the said tenants were inducted into possession of the property by him and that exhibits A5 to A16 namely the plan, the ration card, the election identity card, the notices, receipts and demand bills cannot be accepted as correct. The Courts below had also noted that the suit was filed on 01.11.2002 and exhibits A17 and A18 lease deeds were obtained by the plaintiff from the tenants just prior to the filing of the suit to show that he is in possession of the property and that PW2, who had stated in his cross examination that he had leased out the suit property in the year 1997 to Veeraiah could not explain why he had obtained exhibits A17 and A18/lease deeds in the year 2002 and that, therefore, the lease deeds obtained clearly indicate that they are obtained just for the purpose of procuring evidence in support of the claim of the plaintiff. PW2 had also stated in his cross examination that subsequently the property was not mutated in his name in the municipal record till the filing of the suit. Therefore, the tax receipts and electricity receipts filed by PW2, the plaintiff, cannot be countenanced; and in the circumstances, the Court below held that the said documents do not relate to the suit property and are not sufficient to establish the possession of the plaintiff through his alleged tenants. DW1 asserted in her evidence that after the gift deed in her favour, Veeraiah, one of the tenants was paying rents to her and that he was running a mess by name Ambica mess. DW2, the Bank Manager stated that the defendant mortgaged the suit property when a loan was obtained by one Raghavendra Rice Corporation. Coming to the evidence of PW6, one of the tenants, his affidavit in lieu of examination-in-chief on a perusal would show that he had asserted that he was a tenant in the shop of the plaintiff and that he carried on a gunny bags business in the said shop since 01.05.2001 and that as on the date of filing of the suit he was paying RS.1,000/- as rent besides electricity consumption charges and that the husband of the defendant had pressurised him and another to vacate the property by stating that it is his wife's property and that at that time, he (PW6) had told the said

facts to the plaintiff and that the plaintiff had obtained the registered lease deeds from him and another. However, at the end of his chief affidavit, he had also stated that the defendant's husband had evicted him and that the portion he had vacated is now vacant. In his cross examination he had admitted that he is not in occupation of the suit schedule property at present and that Veeraiah had not vacated his portion and that he does not know whether Veeraiah occupied the portion, which was vacated by him.

Therefore, when this evidence is considered with the other evidence on record, the same does not help the plaintiff to advance his case or dislodge the case of the defendant who is having *prima facie* title in view of the registered gift deed in her favour executed by her mother Yasodamma who in her turn has got the property under a Will executed by her mother Annapurnamma. Coming to the evidence of the other tenant examined as DW5, what is to be noted is that he had also asserted in his affidavit filed in lieu of examination-in-chief that the owner of the premises was Yasodamma and that she had inducted him into possession as a tenant in the year 1998 and that he had paid rents to her and that it is a non residential building and that he was doing hotel business under the name and style 'Ambica Mess' in that rented premises and that on 01.08.2002 the defendant and her husband came to the rented premises and stated that the property was gifted to the defendant and had demanded him to pay the rent and obtained his signatures on a rental agreement and that on the other hand, the plaintiff had also come to his shop in September 2002 and claimed that the said property fell to his share in partition of joint family properties and that he had also obtained a registered lease deed in his favour by stating that such a rent deed is required for filing a suit and that he did not visit the Sub-Registrar's office, Khammam but he had only signed on the document presented by the plaintiff as well as the defendant as he was not certain as to who is the real owner of the said property as on that day. He had further stated that on 08.11.2002 the defendant, her husband and her mother Yasodamma came to him and that Yasodamma had explained the circumstances under which the defendant became the owner of the said premises and that Yasodamma had intimated him to pay the rents every month to her daughter but not to her son

Rama Rao as he has no right or interest in the rented property and that as such he had paid the rents for the months of September and October 2002 to the defendant as instructed by the previous real owner. He had further asserted in his chief affidavit that Anatha Rao vacated the premises on 05.12.2002 and that he had occupied the said portion also of Anantha Rao and had executed the rental agreement dated 06.12.2002 in favour of the defendant for the said premises also and that he is in occupation and enjoyment of both the Northern and Southern portions of the property, which is a common block, and that he is running his hotel business and paying rent to the defendant every month. In his cross examination he had admitted that he had not filed any document to show that Yasodamma gave the house on rent to him and that he had paid rents to her but had denied the suggestions given in line with the case of the plaintiff. He had denied his signatures on exhibits A17 and A18. When the evidence of this witness is read along with the entire oral and documentary evidence on record, it is clear that PW6 having vacated the property at the instance of the husband of the defendant is no longer in possession of the suit schedule property and that DW5 had taken that portion also on lease from the defendant and he is now in occupation of both Southern and Northern portions of the property as a tenant and is paying rents to the defendant after executing a rent deed in respect of the property that was subsequently leased to him on PW6 vacating the property. Having thus analysed the evidence both oral and documentary this Court finds itself in agreement with the concurrent findings of fact recorded by the Courts below that the plaintiff could not establish his possession through the tenants and that on the other hand, the defendant could establish her possession through her tenants. Even assuming for a moment that on appreciation of evidence two inferences, one favourable to the plaintiff and the other favourable to the defendant, are possible, the one drawn by the lower appellate Court is binding on the High Court in the second appeal and adopting any other approach is not permissible. Added to this, the claim of possession of the plaintiff through tenants is not based on any lawful title or a valid document of title and on the other hand, the defendant had established a *prima facie* case of title by virtue of the registered gift deed executed by her

mother and the person who is presently in possession of the property as a tenant had supported the case of the defendant; and he is admittedly paying rents to her in respect of the subject property. Nevertheless, even applying the principle that possession follows title, it can safely be concluded that the plaintiff is not entitled to the relief of perpetual injunction claimed in the suit.

8. Having regard to the reasons assigned, this Court is satisfied that the concurrent findings of fact recorded by the courts below on all the issues in favour of the defendant and against the plaintiff do not brook interference and that the courts below are justified in dismissing the suit of the plaintiff. The findings of facts recorded by the courts below were based on proper appreciation of evidence and the material on record and there was neither illegality nor irregularity in those findings and therefore, the findings do not require to be upset. Further, the existence of a substantial question of law is a *sine qua non* for the exercise of jurisdiction by this court as per Section 100 of the Code of Civil Procedure. The questions raised strictly speaking are not even questions of law let alone substantial questions of law.

9. Viewed thus, this Court finds that none of the questions raised are substantial questions and that there is no substance in the questions raised and that therefore, the second appeal is devoid of merit and is liable for dismissal at the stage of admission. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. The view of this court is reinforced by the ratio in the decision in **Gurudev Kaur v. Kaki** (AIR 2006 SC 1975). In the case on hand, as this court finds, after careful examination of the pleadings, the evidence and the contentions, that no substantial question of law is involved, this second appeal is liable for dismissal at the stage of admission in view of the narrow compass of Section 100 of the Code of Civil Procedure.

10. In the result, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this second appeal shall also

stand dismissed.

17th February 2016
Vjl

M. SEETHARAMA MURTI, J