

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.340 of 2000

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Date:12.04.2016

Between:

Gangam Bharathamma and another.

... Appellants.

AND

Hanmandla Suguna and others.

... Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.340 of 2000

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JUDGMENT:

This appeal is preferred against judgment dated 29-02-2000 in A.S.No.50/1998 on the file of I Additional District Judge, Karimnagar whereunder judgment dated 18-11-1998 in O.S.No.50/1994 on the file of Principal Junior Civil Judge, Karimnagar was confirmed.

2. Appellants herein are unsuccessful plaintiffs in both the Courts. Parties are hereinafter referred to as plaintiffs and defendants as arrayed in the suit. Plaintiffs contended that first plaintiff is owner of Acs.4-39 guntas of land in Survey No.1000/A and

owner of Acs.2-00 cents of land in Survey No.1044/A. They contended that second plaintiff is owner of the remaining land in Survey No.1044/A. According to them, the total extent of Survey No.1044/A is Acs.11-00 cents, out of which, Acs.9-00 cents owned by second plaintiff and Acs.2-00 cents owned by first plaintiff. They contended that they both purchased the suit properties for Rs.17,000/- under a simple sale deed from D1 and possession was delivered to them.

They contended that first plaintiff initiated proceedings before revenue authorities under Records of Rights Act and after detailed enquiry, first plaintiff is recorded as owner for the suit lands and that the defendants have no right in the said property. They contended that plaintiffs came to suit property on 23-01-1994, the defendants took away fuses from the electric motor, situated in Survey No.1000/A, in spite of protest from the plaintiffs and therefore, the defendants have to be restrained by way of perpetual injunction from interfering with peaceful possession and enjoyment of Acs.4-39 guntas in Survey No.1000/A and Acs.2-00 cents in Survey No.1044/A. The defendants resisted the claim of plaintiffs and according to them, first defendant purchased Acs.4-39 guntas in Survey No.1044/A i.e., plaint schedule property from second plaintiff and father of second plaintiff by name Gangam Linga Reddy through document No.1159/75. They contended that from the date of purchase, first defendant is in continuous possession and enjoyment and his name is also recorded as owner and possessor in the revenue records and he is paying land revenue and that the plaintiffs have no right in respect of the suit properties. On these contentions, trial Court framed appropriate issues and conducted trial during which, three witnesses were examined and 18 documents were marked on plaintiffs side, whereas four witnesses were examined and 18 documents were marked on behalf of defendants and on a over all consideration of oral and

documentary evidence, trial Court held that plaintiffs are not entitled for the relief of injunction holding so dismissed the suit. Aggrieved by the dismissal of the suit, plaintiffs preferred appeal to the District Court and I Additional District Judge, Karimnagar, on a reappraisal of entire evidence of both parties, confirmed the findings of the trial Court and dismissed the appeal. Aggrieved by which, present second appeal is preferred.

3. This Court admitted the second appeal on 21-06-2000 treating the following as substantial question law:-

“a) Whether a person in possession of immovable property, without having title to it can seek an injunction against the owner, from dispossessing him from such property?

b) Whether the entries of record of Rights (Pahanies) which have a presumption of corrections under Record of Rights Act can be discarded from consideration on the ground that the simple sale deed on the basis of which such possession is claimed, is disbelieved by the Court?

c) Whether the non-pleading of a fact by the husband of a plaintiff, in an earlier suit filed against him by his sons through first wife can be pressed into service against such plaintiff?”

4. Heard both sides.

5. Advocate for appellants submitted that both trial Court and appellate Court have ignored the simple sale deed executed by first defendant and the findings of both trial Court and first appellate Court are erroneous. He submitted that the reasons assigned by the trial Court and first appellate Court for not accepting the simple sale deed are totally incorrect.

He submitted that the observations of the first appellate Court that the

plaintiffs ought to have amended their suit for declaration of title are totally misconceived and incorrect. He submitted that both the Courts have not properly appreciated evidence of P.Ws.1 to 3 and documents Exs.A1 to A18 and the findings of first appellate Court are perverse and therefore, liable to be set aside.

6. On the other hand, advocate for defendants submitted that the document relied on by plaintiffs i.e., alleged simple sale deed has not been filed into Court and that document was not even referred in the earlier suit, which was filed by first wife of second plaintiff and mother of D1 & second plaintiff for partition.

He further submitted that pahanies filed on behalf of the defendants clinchingly established their possession from 1985 continuously till the date of filing of the suit, whereas the pahanies filed by the plaintiffs do not pertain to suit properties and both trial Court and first appellate Court have rightly appreciated these aspects and refused the relief of permanent injunction and that there are no grounds to interfere. It is further submitted that there is absolutely no question of law involved to be determined by this Court and therefore, the second appeal is devoid of merits.

7. Now the point that would arise for my consideration in this appeal is whether judgments of the Courts below are legal, proper and correct?

8. **Point:-** There is no dispute with regard to relationship between the parties. First plaintiff is wife of second plaintiff, first defendant is sister of second plaintiff, second defendant is husband of first defendant, whereas D3 and D4 are children of defendants 1 & 2. It is also not in dispute that the suit properties originally belonged to father of second plaintiff and first defendant and these properties were sold to D1 through a registered document under document No.1159/75. It

is also not in dispute that first wife of second plaintiff filed suit for partition showing the second plaintiff herein, first defendant herein and mother of these two as defendants, wherein the second plaintiff herein filed written statement in that suit pleading that the suit properties were sold to first defendant by himself and his father. On the earlier partition suit in O.S.No.27/1985, there was no reference about the alleged simple sale deed said to have been executed by first defendant. P.W.1 i.e., second plaintiff specifically deposed in his evidence that the suit properties are purchased in the year 1975 under a simple sale deed, if really that was to be true, the same should have been pleaded by him in the earlier suit O.S.No.27/1985, which was filed for partition by his first wife. Admittedly, the said document is not filed into Court for the reasons best known to the plaintiffs. When second plaintiff admitted that he along with his father sold the property to first defendant through a registered document No.1159/75 and the pahanies at least from the year 1985 till date of filing of the suit disclose that defendants were in possession and enjoyment of the properties as owners, which supports and corroborates the version of defendants with regard to purchase of property under document No.1159/75, burden is heavy on the plaintiffs to show how they got back this property into their fold. There is absolutely no evidence from the plaintiffs, except asserting that they continued in possession and enjoyment from the date of execution of the simple sale deed, which document has not seen the light of the day.

9. As rightly pointed out by Advocate for defendants the grounds as urged as substantial questions of law are not at all applicable in view of the fact that the plaintiffs have miserably failed in establishing their case and plaintiffs cannot claim title over the suit schedule property in the absence of re-conveyance of the same by D1 in

favour of second plaintiff. Both trial Court and first appellate Court have elaborately discussed every aspect of the matter including the relevancy of pahanies relied on by both parties and I do not find any wrong in the findings of the trial Court and first appellate Court. There is absolutely no question of law involved in this appeal leave alone substantial questions of law and therefore, second appeal is liable to be dismissed as devoid of merits.

10. For the above reasons, second appeal is dismissed as devoid of merits, but under the circumstances, without costs.

11. As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:12.04.2016

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