

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.371 OF 2016

JUDGMENT:

This appeal is filed under Section 100 C.P.C. challenging the concurrent findings of trial court at Zaheerabad in O.S.No.16 of 2008 and Senior Civil Judge at Zaheerabad in A.S.No.2 of 2014 whereby perpetual injunction was granted against the appellants herein restraining them from interfering with peaceful possession and enjoyment of the suit schedule property.

Respondent/plaintiff filed suit for perpetual injunction simplicitor alleging that he is the absolute owner of the suit schedule plot having inherited the same from one late Ashamma wife of Hanmanthu, mother-in-law of plaintiff. Late Ashamma and her husband Hanmanthu were blessed with daughter, named as Bichamma whom the plaintiff married. Bichamma predecessor to his father and mother, therefore, the plaintiff alone succeeded the entire property of Ashamma and Hanmanthu i.e., suit schedule property.

After plaintiff became the owner of property, he obtained permission from Grampanchayat for construction of house in the suit schedule property and started construction, while construction is going on, defendants attempted to interfere with the construction of building but their illegal acts were resisted by plaintiff/respondent herein. Again on 15-2-2008, defendants made an attempt to

interfere with the peaceful possession and enjoyment of the property by plaintiff, but the plaintiff/respondent herein was able to resist the same, therefore, he filed suit for perpetual injunction.

Defendants 1 and 2 filed a written statement denying the allegations of plaint inter-alia contended that first defendant filed O.S.No.48 of 1978 against plaintiff therein and one Ramanna, which was ended in compromise and plaintiff voluntarily agreed that defendant No.1 herein is the owner and possessor of the suit plot. Plaintiff has shown his house as western boundary but the plaintiff has no property on the western side of the suit property. Towards west of the suit plot, defendants own a house and they have been using the suit plot as court yard of the house of first defendant. But the plaintiff suppressing the real facts approached this court with unclean hands.

D.3 to D.6 did not file separate written statement.

Basing on the above pleadings, the trial court framed the following issues.

1. Whether plaintiff is entitled for grant of perpetual injunction as prayed for?
2. To what relief?

During trial, on behalf of plaintiff, P.Ws.1 to 4 were examined and Exs.A.1 to A.5 were marked and on behalf of defendants, D.Ws.1 to 3 were examined and Exs.B.1 to B.6 were marked.

Upon hearing arguments of both counsel, trial court decreed the suit believing the lawful possession of the suit plot as on the date of filing of the suit while accepting the alleged threat of interference with the possession of the plaintiff by defendants.

Aggrieved by the decree and judgment of trial court, defendants preferred an appeal in A.S.No.2 of 2014 before first appellate court i.e., Senior Civil Judge Court at Zaheerabad, which was ended in dismissal by decree dated 10-2-2016 confirming the decree passed by the trial court.

Aggrieved by the same, present Second Appeal is preferred raising several contentions mainly contending that the suit schedule property is a court yard and it is only way to reach first defendant's house and if plaintiff is allowed to complete construction, it is difficult for them to reach 1st defendant's house but the trial court did not consider the specific plea raised in the written statement and appellate court also miserably failed to look into the contentions raised by defendant No.1 in his pleadings, evidence also and committed an error in passing a decree in favour of plaintiff and granted perpetual injunction.

At the stage of admission, heard both counsel Sri P.Srihari Nath, learned counsel for appellants and Sri J.Mohan Singh, learned counsel for respondent at length.

It is admittedly a suit for injunction simplicitor where the court has to record findings whether plaintiff who approached the court

was able to establish his lawful possession and enjoyment of the property as on the date of filing of the suit and whether there is any attempt to infringe the legal right of the plaintiff but court is not supposed to record findings regarding title attaching finality.

According to plaintiff, he succeeded property from his in-laws Late Ashamma and her husband Hanmanthu, who blessed with daughter named as Bichamma, who married the plaintiff. Bichamma died before the death of her father and thereafter, her mother died. Hence, the plaintiff became the absolute owner of the property but title to the property is not germane. However, the documentary evidence Exs.A.1 and A.2 produced before the trial court establish that plaintiff is paying tax to the Gram Panchayat for the house constructed by him and Ex.A.3 is challan evidencing payment of fee for grant of permission dated 4-10-2007 and Ex.A.4 is permission granted by Gram Panchayat for construction of house and Ex.A.5 is approved plan. All these three documents Exs.A.3 to A.5 would establish that plaintiff is in possession and enjoyment of the property and permission was granted for construction in the suit schedule property by Gram Panchayat. However, Gram Panchayat assessed the property to tax and collected as per Exs.A.1 and A.2. Therefore, these documents clinchingly establish that plaintiff is in lawful possession and enjoyment of the property.

Only contention before this court by counsel for defendants is that the suit schedule property is the court yard of the house of first

defendant and all the defendants are using the suit schedule property for ingress and egress of first defendant's house and he has drawn the attention of the court to certain paras of evidence extracted in the judgment of the trial court, more particularly, paras 9, 10 and 11. Trial court adverted to evidence of P.Ws.1 and 3 and in evidence of P.W.1, he admitted that towards western side of the suit schedule property, the first defendant's land is situated and that in the year 1978, first defendant filed a suit in O.S.No.48 of 1978 against him and also one Ramanna. Taking advantage of the alleged admission about location of land of first defendant on the western side of the suit land, it is contended that plaintiff himself admitted about the situation of land of D.1. Similarly, P.Ws.2 and 4 also admitted about the location of land of D.W.1 on the western side of the suit schedule property. Therefore, the said admissions are not sufficient to come to a conclusion that the defendants are in possession and enjoyment of the suit schedule property and mere owning land on the western side of the suit schedule property is not a ground to disbelieve possession and enjoyment of suit schedule property by plaintiff. However, the case of defendants at any stage is that the suit schedule property is being used as a lane to reach the road. But there is absolutely no evidence and it is not based on any pleadings in the written statement. Therefore, the right claimed by defendants is by way of easement which is not established by adducing cogent and satisfactory evidence. The defendants also

produced Exs.B.1 to B.6. But those documents are of no assistance to prove that this schedule property is being used as lane for ingress and egress.

Moreover, Ex.B.1 supports the case of plaintiff in all respects and even after comparing boundaries of suit schedule property and property of defendants, they are two different properties. Thus, the trial court rightly concluded that plaintiff is able to establish his lawful possession of property as on the date of filing of suit and also accepted the evidence to establish threat to interfere with the legal right of plaintiff while continuing in possession of the suit schedule property.

The appellate court after consideration of evidence independently, not withstanding findings recorded by trial court, accepted the findings recorded by trial court regarding lawful possession and threat of interference by defendants and confirmed the decree passed by trial court.

After considering the material on record, including the arguments advanced by both counsel for appellants and respondent, I find no question of law much less substantial question of law to be decided by this court in the second appeal, since, jurisdiction of this court is limited to substantial question of law under Section 100 of C.P.C.

Therefore, I find no grounds to interfere with the findings recorded by both trial court and appellate court and accordingly, this Second Appeal is dismissed at the admission stage but without costs.

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

JUSTICE M.SATYANARAYANA MURTHY

Dated 28-9-2016.

Dvs.



HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 28-9-2016.

Dvs