

HON'BLE SMT JUSTICE ANIS
SECOND APPEAL No.886 OF 2014

J U D G M E N T:

This Second Appeal is directed against the judgment and decree dated 20.06.2014, passed in A.S.No.10 of 2011, by the III Additional District Judge, Bhimavaram, whereby and whereunder the learned Additional District Judge has dismissed the appeal confirming the judgment dated 18.04.2011, passed in O.S.No.100 of 2007, by the Principal Junior Civil Judge, Bhimavaram.

The appellant herein is the defendant and respondent herein is the plaintiff in O.S.No.100 of 2007. The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

The brief averments of the case are that the respondent/plaintiff filed the suit O.S.No.100 of 2007 against the appellant/defendant for declaration that he is the absolute owner of the suit schedule property and sought for possession of the plaintiff schedule property after evicting the defendant from the said property. The plaintiff contended that originally, item Nos.1 & 2 of the plaintiff schedule property belong to late Chikile Yesobu, who has two wives by name Akkamma and Subbamma. Father of the plaintiff Devadanam is the son of Yesobu and Akkamma. Defendant's husband name is Krupadanam and he is the son of Yesobu and Subbamma. After the death of Chikile Yesobu, his two sons i.e., Devadanam and Krupadanam partitioned the plaintiff schedule property in the year 1960 into two equal shares and enjoyed the same. They also formed two passages in the schedule property and kept them joint for the use of both of them. They have enjoyed their respective shares as owners of the

property. Thereafter, defendant's husband Krupadanam sold away his share in Item Nos.1 & 2 of the plaint schedule property to the plaintiff's mother Chikile Santhamma under a registered sale deed dated 13.06.1961 and delivered possession of the said property. All the family members of the plaintiff were in possession of item Nos.1 & 2 of the plaint schedule property including two path ways. The parents of the plaintiff constructed a thatched house in Item No.1 of the plaint schedule property and used to reside therein. Plaintiff used to manage item Nos.1 & 2 of the plaint schedule property as his parents fell ill. The defendant being the close relative of the plaintiff's family was permitted to reside in the said thatched house in the year 2001 on a condition to get it repaired every year and to keep the house in good condition. Ever since the year 2001, the defendant is residing in the thatched house as a licensee of the plaintiff and the possession of the defendant is permissive only, and she had no right and title over the said property. Plaintiff's mother Santhamma died in the year 1999 intestate. After the death of the mother of the plaintiff, the father of plaintiff and remaining legal heirs of the plaintiff's mother sold away Item Nos.1 & 2 of the plaint schedule property to the plaintiff under a registered sale deed dated 20.05.2002 for a valuable consideration. Subsequently, the plaintiff removed the said thatched house in Item No.1 site of the plaint schedule property and constructed a new thatched house to suit his convenience. The defendant had no right or title or interest over item Nos.1 & 2 of the plaint schedule property. In the month of August 2002, when the plaintiff wanted to construct a terraced building in Item No.1 of the plaint schedule property and demanded the defendant to vacate the thatched house, the defendant with a malafide intention created some false certificates from the Village Secretary

for Item No.1 of the plaint schedule property and high handedly, raised a foundation for construction of a building in Item No.2 of the plaint schedule property. Due to intervention of the plaintiff and elders of the village, the defendant stopped proceeding further and filed suit for injunction in O.S.No.369 of 2002 before the Principal Junior Civil Judge's Court, Bhimavaram for the house property bearing door No.11-44(1) in an extent of Ac.0.1½cents. The said suit was decreed with an observation that the defendant therein (plaintiff herein) has to be evicted under due process of law. On 07.02.2007, plaintiff issued a registered legal notice demanding the defendant to vacate the plaint schedule property. The defendant after receiving the notice has not given any reply and not vacated the plaint schedule property. Plaintiff wants to construct a terrace residential building after his retirement. The defendant was in unauthorized use and occupation of the plaint schedule property and she is not entitled to continue in possession of the plaint schedule property. Therefore, plaintiff filed the present suit.

The sole defendant filed the written statement denying the plaint averments and stated that she married Krupadanam about 45 years back and since then, her family has been residing in their own house. The house property of defendant and his adjacent site ad measuring Ac.0.03cents is the absolute property of defendant. Defendant intended to construct a terraced building with the Government aid in an extent of Ac.0.01½cents of her site. When the plaintiff tried to dispossess the defendant from the property, the defendant filed O.S.No.369 of 2002 against the plaintiff and the said suit was decreed in favour of the defendant. Plaintiff and his family members are not residing at Srungvruskhram and neither the plaintiff nor his family members are in possession and enjoyment

of the plaint schedule property. The registered sale deed dated 13.06.1961 said to have been executed by the defendant's husband in favour of the plaintiff's mother is not in relation to the property, where the defendant has been in possession. From the date of her marriage, the defendant is residing in the house bearing No.11-44(1). The defendant stated that she is in continuous possession of the property more than statutory period and perfected her right and title by virtue of adverse possession. She also further asserted that the property in O.S.No.369 of 2002 and the plaint schedule property in the present suit are not one and the same. The property covered under the sale deed dated 20.05.2002 is not identifiable on ground. The defendant further stated that plaintiff is a rich person having immovable properties at Guntur, Mangalagiri and other places. The defendant is an old and helpless lady eking her livelihood by doing coolie work and there is no cause of action by the plaintiff to file the suit. The recitals in sale deed dated 22.05.2002, which shows the delivery of physical possession of the property to the plaintiff is not correct and defendant is in possession of the property and the document executed by legal heirs of late Chikile Santhamma is not a valid document. All the legal heirs were not joined as executants. There is no cause of action to file the suit and finally prayed the Court to dismiss the suit.

Basing on the pleadings, the trial Court framed six issues. To prove his case, the plaintiff examined PWs.1 to 6 and got marked Exs.A1 to A7 on his behalf. On behalf of the defendant, DWs.1 to 3 were examined and Exs.B1 to B5 got marked.

After considering the oral and documentary evidence and after perusing the record, the trial Court held that the plaintiff

established his title over the plaint schedule property and defendant failed to establish her case as pleaded in the written statement and also held that the plaintiff is entitled for declaration over the plaint schedule property as absolute owner and directed the defendant to vacate the premises within three months from the date of judgment.

Aggrieved by the judgment of the trial Court, the defendant filed A.S.No.10 of 2011 on the file of the III Additional District Judge, Bhimavaram. After considering the record and after hearing both sides, the appellate Court dismissed the appeal. Aggrieved by the concurrent findings of the trial Court as well as the first appellate Court, the defendant filed the present second appeal.

Before admitting the appeal, notice was issued to both sides.

Heard arguments for admission of the appeal on the sustentative question of law.

The learned counsel for the appellant argued that the husband of the appellant has not sold away the entire property which was fallen to his share and both the Courts below completely misread Ex.A1 and other evidence available on record, had drawn wrong inference and erroneously came to a conclusion that appellant's husband sold his entire property to the plaintiff's mother. It is also argued that the appellant's husband only sold 40.75 Sq. yards (out of his total extent of 81.5 Sq. yards) and both the Courts below erred in holding that the husband of the defendant sold away 81.5 Sq. yards to the plaintiff's mother under Ex.A1 and further argued that appellant is in possession of the

property and pleaded that she perfected her title by way of adverse possession and relied upon the case law reported in

P. Chandrasekharan and others v. S. Kanakarajan and

others^[1], wherein it is held at paras 16 & 17 as follows:

“16 This Court in Hero Vinoth V. Seshamma [(2006) 5 SCC 545] held:

“24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to decision based on no evidence, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

17. When thus the courts below misread and misinterpreted a document of title read with other documents and the plan for the identification of the suit lands whereupon the plaintiffs themselves relied upon, a substantial question of law arose for determination of the High Court in between the parties to the suit.”

and finally prayed the Court to set aside the judgment and decree dated 20.06.2014 passed in A.S.No.10 of 2011 on the file of the III Additional District Judge, Bhimavaram and also O.S.No.100 of 2007 on the file of the Principal Junior Civil Judge, Bhimavaram

dated 18.04.2011.

On the other hand, the learned counsel for the respondent argued that appellant's husband late Krupadanam sold his share to the plaintiff's mother in the year 1961 and since then the respondent is in possession of the property and the appellant being the widow of his paternal uncle's wife and paternal uncle, permitted her to reside in the thatched house and the possession of the appellant is permissive in the suit schedule property and appellant has not produced any evidence to prove her title to the property claimed by her. There is no dispute with regard to the identity of the property. The documents relied by the appellant under Exs.B4 & B5 does not constitute her title to the property in which she is in possession and further argued that the appellant's husband sold the property on 13.06.1961 to the plaintiff's mother under a registered sale deed. After the death of plaintiff's mother, all the legal heirs sold the property to the respondent on 20.05.2002 and delivered the possession of the property. Since then, the respondent/plaintiff is in possession and enjoyment of the property. The appellant with a malafide intention created Exs.B4 & B5 without any manner of right and the appellant is not the owner of the suit schedule property and both the Courts gave concurrent finding that the plaintiff is the owner of the property and directed the appellant to vacate the premises within three months from the date of judgment i.e., 18.04.2011. It is also argued that the appellant has not made out any case to form the substantive question of law for consideration in this appeal and therefore, the appeal is liable to be dismissed at the stage of admission.

Now the point that arises for consideration in this appeal is whether the appellant proved that there is any substantial question

of law involved for admitting this appeal?

As per the evidence on record, there is no dispute that originally, Item Nos.1 & 2 of the plaint schedule property belong to late Chikile Yesobu and he had two wives by name Akkamma and Subbamma. The father of plaintiff Devadanam is the son of Yesobu and Akkamma. Defendant's husband Krupadanam is the son of Yesobu and Subbamma. After the death of Chikile Yesobu, his two sons Devadanam and Krupadanam partitioned the property in and around 1960 into two equal shares. Defendant's husband sold his share of property in Item Nos.1 & 2 to the plaintiff's mother Ch. Santhamma under a registered sale deed on 13.06.1961 and delivered the possession of the same. A perusal of Ex.A1 proved this fact. After the death of plaintiff's mother Ch. Santhamma, all the legal heirs sold the property to the plaintiff on 20.05.2002 under Ex.A2 for a valuable consideration. The main grievance of the appellant is that Ex.A1 is not properly considered and the contents were misread. A perusal of the document shows that appellant's husband sold his share of property to the plaintiff's mother on 13.06.1961. There is no specific recital that he sold his half share in the plaint schedule property. Further, during the lifetime of Krupadanam i.e, appellant's husband, he never agitated about the right and title over the property, further he never disputed about the extent of the property sold by him to the plaintiff's mother. It is also an admitted fact that appellant being the close relative of the respondent's family, was allowed by the respondent to reside in the thatched house situated in Item No.1 of the plaint schedule property. Since then, the appellant is residing in the said thatched house. It is also an admitted fact that appellant filed O.S.No.369 of 2002 for grant of permanent injunction before the Principal Junior Civil Judge's Court,

Bhimavaram and the said suit was decreed and the Court observed that the respondent has to be evicted by the appellant under due process of law.

The appellant also setup a claim over the suit schedule property and stated that she perfected her right and title by virtue of an adverse possession.

The concept of adverse possession contemplates an hostile possession i.e., a possession which is expressly or impliedly in denial of the title of the true owner. Appellant must establish clear and unequivocal evidence that her possession was hostile to the real owner and amounted to a denial of his title to the property claimed. But, appellant failed to prove that she perfected her right and title by way of adverse possession.

The other contention of the appellant is that the sisters of the plaintiff' are not the vendors under Ex.A2 and they have signed as witnesses. Therefore, the title to the property do not get transferred under Ex.A2. Admittedly, there is no dispute *interse* between plaintiff and other legal heirs of late Chikile Santhamma and they never challenged Ex.A2 as a fabricated document executed without their knowledge. Therefore, the appellant now cannot take such plea. Moreover, the appellant filed her written statement, but has not taken plea that her husband only sold half of the share i.e., 40.75 Sq. yards out of his property.

There is no dispute about the ratio laid down by the Hon'ble Supreme Court in the decision cited *supra*. Both the courts have concurrently held that appellant's husband sold his share to the plaintiff's mother and delivered possession and the appellant's possession in the suit schedule property is permissive possession

and both the courts gave a concurrent finding that plaintiff is the owner having title to the suit schedule property and decreed the suit.

Thus, the concurrent findings of both the Courts below need no interference and appellant failed to prove that there is a substantial question of law involved in this appeal and hence, the appeal is devoid of merits and is liable to be dismissed.

Accordingly, the second appeal is dismissed at the stage of admission. No order as to costs.

Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

Date: 05.08.2016
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[\[1\]](#) (2007) 5 Supreme Court Cases 669