

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.1184 of 2011

JUDGMENT

The 2nd defendant in O.S.No.55 of 1992 on the file of the Court of the Principal Junior Civil Judge, Tadepaligudem, and 2nd appellant in A.S.No.10 of 1999 on the file of the Court of the Senior Civil Judge, Tadepaligudem, preferred this appeal under Section 100 of CPC, challenging the decree and judgment passed by the trial court confirmed by appellate court granting permanent injunction against the 2nd defendant/appellant and in favour of the plaintiff/respondent.

For the sake of convenience, the parties are referred to as arrayed before the trial court.

The plaintiff filed the suit for grant of permanent injunction alleging that originally, the property was acquired by late Botta Surayya, father of 2nd defendant, and for discharging his debts, he sold the property to plaintiff by registered sale deed dated 25-04-1956 for Rs.1,500/-, since then, he has been in possession and enjoyment of the property. Out of the sale consideration, the plaintiff paid Rs.1,400/- to one Seemakurthi Narayana Murthy of Telikicherla towards full satisfaction of the decree in E.P.No.82 of 1955 in O.S.No.436 of 1955 obtained by him against the original owner Botta Surayya and balance of Rs.100/- was paid to the said Surayya at the time of execution of registered sale deed and took delivery of possession of the schedule property on the same day. Since the date of purchase, he has been in possession of the same without any interruption by anybody. While so, the defendants made an attempt to interfere with the possession and enjoyment of the plaintiff without any right or title over the property and their highhanded act was resisted. The defendants are also trying to tamper the records to get their names mutated in the revenue records. Hence, the suit.

The defendants filed written statement contending that the father of defendants Botta Surayya never sold plaintiff schedule property to plaintiff and

the sale deed dated 25-04-1956 is not true and not supported by consideration and that the plaintiff never acquired any title over the plaint schedule property. It is specifically contended that the defendants are in possession and enjoyment of the schedule property, besides raising several contentions regarding relationship between the plaintiff and Surayya.

Basing on the above pleadings, the trial court framed two issues. On behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A-1 to A-8 were marked. On behalf of the defendants, DWs.1 to 4 were examined and Exs.B-1 to B-10 were marked.

Upon hearing the argument of both the counsel, the trial Court found that the plaintiff is in possession and enjoyment of the property and the defendants made an attempt to infringe and invade the legal right of plaintiff and granted permanent injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the schedule property.

Aggrieved by judgment and decree, both the defendants being unsuccessful, preferred appeal in A.S.No.10 of 1999, and the lower appellate court by judgment and decree dated 22-12-2008, dismissed the appeal confirming the judgment and decree of the trial court recording concurrent finding.

The present appeal is filed raising several contentions and the questions of law raised in the grounds of appeal are as follows:-

- (a) Whether Exs.A-1 and A2 can be relied on in the absence of the evidence of scribe of Ex.A1 and attester of Ex.A2 ?
- (b) Whether entries in revenue record can be relied on even though they are contrary to the declarations given in land ceiling proceedings?

In fact, the scope of Section 100 CPC is limited and when there is a substantial question of law, this court, being the second appellate court, can admit and decide such substantial question of law. Even the 1st question framed by the appellant is purely a question of fact and the 2nd question is a settled question of law. Therefore, those two questions would not give rise to

any substantial question of law to be decided by this Court.

Section 100 of CPC provides for a Second Appeal only on the substantial question of law. Generally, a Second Appeal does not lie on questions of fact or of law as held in **STATE BANK OF INDIA AND OTHERS Vs. S.N.GOYAL**^[1]. The Apex Court explained the terms “substantial question of law” and observed as under :

“The word ‘substantial’ prefixed to ‘question of law’ does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. ‘Substantial questions of law’ means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. .. any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case.”

Similar view was taken in **Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd.**^[2], wherein the Apex Court held as follows:-

“The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties.”

In **UNION OF INDIA Vs. IBRAHIM UDDIN AND ANOTHER**^[3], the Hon'ble Supreme Court reiterated the same.

In the present facts of the case, the first question is whether Exs.A-1 and A-2 can be relied on, in the absence of the evidence of scribe of Ex.A1 and attesor of Ex.A-2.

It is a pure question of fact and it would not give rise to any question of law muchless substantial question of law as defined in the above judgments.

The second question is regarding evidentiary value of revenue record. The same question came up for consideration in **UNION OF INDIA**

Vs. IBRAHIM UDDIN AND ANOTHER^[4] and the Apex Court held that the revenue record is not a substantive piece of evidence and it cannot be looked into for deciding the title as revenue record will not confer any title or create interest in immovable property. Therefore, by applying the principle laid in the above two judgments, the revenue record, if relied upon by the trial court and the lower court appellate court to grant relief is, against law.

However, in a suit for bare injunction the court is required to record a finding as to who is in lawful possession and enjoyment of the property as on the date of suit and attempt to infringe or invade the legal right of the defendants as contemplated under Section 38 of the Specific Relief Act.

The trial court and appellate court recorded that the plaintiff is in lawful possession and enjoyment of the property and that the defendants threatened to interfere with the possession and enjoyment of the property and granted permanent injunction in favour of the plaintiff.

The second question referred to above is only regarding appreciation of evidence and mere failure to declare the suit schedule property in a land ceiling proceedings is not a ground to deny relief when the plaintiff is able to establish that he is in lawful possession as on the date of filing suit besides proof of requirement under Section 38 of the Specific Relief Act.

In a suit for bare injunction, the courts are not expected to record a finding as to title attaching finality except to look into the title incidentally to decide lawful possession on the date of filing of the suit. Therefore, whatsoever findings recorded by trial court and the lower appellate court as to title of the plaintiff attaching finality are hereby set aside while affirming the findings of the trial court and the lower appellate court as to lawful possession and an attempt to infringe or invade the legal right or obligation of the plaintiff for grant of permanent injunction in favour of the plaintiff.

Hence, the appeal is dismissed confirming the decree and judgment of the trial court granting permanent injunction while setting aside the incidental findings regarding title over the property attaching finality, in view of the limited scope of trial in a suit for bare injunction. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 25-07-2016
Prv

HON’BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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[\[1\]](#) AIR 2008 SC 2594
[\[2\]](#) AIR 1962 SC 1314
[\[3\]](#) (2012) 8 SCC 148
[\[4\]](#) (2012) 8 SCC 148