

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.518 OF 2012

JUDGMENT:

The defendants in O.S.No.54 of 2004 on the file of the Principal Junior Civil Judge, Markapur, and appellants in A.S.No.27 of 2010 on the file of Senior Civil Judge, Markapur, preferred this appeal under Section 100 of the Code of Civil Procedure challenging the concurrent findings recorded by both the trial Court and the appellate Court.

2. For convenience of reference, the ranks given to the parties before the trial Court in O.S.No.54 of 2004 will be adopted throughout the judgment.

The plaintiff filed the suit to declare that he is the exclusive owner of AB wall as described the plaint schedule and for grant of permanent injunction restraining the defendants and their representatives from interfering with AB wall and from making changes to the said wall and causing damage to it in any manner whatsoever at any time and also for mandatory injunction directing the defendants to close the niches created by them on the southern side of AB wall.

It is the case of the plaintiff that he is the absolute owner of the house bearing door No.9/214 situated in 9th Ward of Markapur Municipality and the defendants are the adjacent owners of the plaintiff's house on the southern side and to further south the defendants are having their house. AB marked wall of the plaint plan is the southern wall of the plaintiff's house and it is his absolute property. BC wall of the plaint plan is southern wall of the house of Kajjayam Pedda Rao, elder brother of the plaintiff, and it is his exclusive wall. The plaintiff purchased the house from Hurumathkari

Guddamma, w/o.Lakshmanji through a registered sale deed dated 01.02.1989, where the southern side AB wall was mentioned as exclusive wall of his vendor and right in the said wall is transferred to the plaintiff along with the property covered by the schedule. The plaintiff while reconstructing his house raised the height of AB wall soon after his purchase and raised RCC slab on the entire width of AB wall and the defendants did not raise any objection having full knowledge that AB wall is his exclusive wall.

On 04.03.2004, all of a sudden the defendants began to remove the bricks from the southern side of AB wall at two places. Thereupon, the plaintiff raised an objection but the defendants did not stop the removal of bricks in spite of his protest. Thereafter, the plaintiff got issued a telegram to the 1st defendant through his advocate calling upon him to visit the alleged incident, but he did not oblige to the request. Hence, the suit.

3. The 1st defendant filed written statement, which was adopted by the 2nd defendant, denying the material allegations *inter alia* contending that the defendants have been using AB wall since long time i.e., from the date of their purchase. He stated that the vendor of the plaintiff has no exclusive right in the AB wall of plaintiff's plot and one Perumalla Ramaiah purchased vacant site with walls in the year 1948 under a registered sale deed, dated 21.01.1948, from Samudrala Balaiah and Samudrala Lakshmaiah, who are sons of Samudrala Ramaiah, measuring 16 Muras East and West i.e., 24 feet including the thickness of the wall and 30 Muras i.e., 45 feet towards North-South including the thickness of the walls on his side. Thus, the 1st defendant purchased the site inclusive of walls and thereby the plaintiff's vendor has no right to claim the southern side of AB wall as the document of plaintiff came

into existence subsequent to the purchase of the property by the 1st defendant. Therefore, the plaintiff is not entitled to claim exclusive right in the AB wall as shown in the plaint plan, prayed for dismissal of suit.

4. Basing on the above pleadings, the trial Court framed as many as three issues and two additional issues which are as follows:

1. Whether the plaintiff is entitled for the injunction as prayed for?
2. Whether the vendor of the plaintiff has absolute right over the AB wall shown in the plaint plan?
3. To what relief?

Additional Issues:-

1. Whether plaintiff is entitled for declaration of exclusive title of plaintiff in AB wall of plaint plan and for consequential permanent injunction against defendants and their men from interfering with peaceful possession and enjoyment of suit wall?
2. Whether plaintiff is entitled for mandatory injunction to close the niches created by defendants in AB wall?

5. During the course of trial, on behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A1 to A6 were marked and on behalf of the defendants, DWs.1 and 2 were examined and Exs.B1 to B6 were marked.

6. Upon hearing argument of both the learned counsel and considering the oral and documentary evidence available on record, the trial Court decreed the suit in favour of the plaintiff granting all the reliefs.

7. Aggrieved by the decree and judgment, dated 01.04.2010,

passed by the trial Court in O.S.No.54 of 2004, the defendants, being unsuccessful before the trial Court, preferred A.S.No.27 of 2010 before the Senior Civil Judge, Markapur, which ended in dismissal by decree and judgment dated 19.10.2011, whereby the appellate Court affirmed the decree and judgment of the trial Court.

8. The present appeal is filed under Section 100 C.P.C. raising several contentions regarding appreciation of evidence by both the trial Court and the appellate Court and formulated three substantial questions of law which are as under:

1. Whether the Courts below were justified in not believing the evidence of DW.2 who is the old tenant of the appellant?
2. Whether the Courts below were justified in not considering the sale deeds of both the parties in proper perspective?
3. Whether the judgments of both the courts below are perverse?

9. Among the above three questions formulated by the learned counsel for the appellants/defendants, questions 1 and 2 are purely questions of fact, but not questions of law. Even to admit the appeal on the ground that the judgment is perverse, the defendants have to show as to non-consideration of any evidence available on record and consideration of extraneous evidence by the trial Court and the appellate Court in passing the decree.

10. During the course of hearing, learned counsel for the appellants drawn the attention of this Court to the boundaries in Ex.B1 and Ex.A1. The boundaries mentioned in Ex.A1 clearly disclose that the southern boundary of the plaintiff's land is Subbarao's Midde and the said boundaries are extracted hereunder for better appreciation.

East	:	Dintakurthi Tulasaiiah's vacant site
South	:	Subbarao's Midde
West	:	Middle sold to Kajjayam Peddarao
North	:	Bazaar

The boundaries covered by Ex.B1 are extracted hereunder:

East	:	Yakkali Gurumurthy and Rastha site of Vendor and Chillamugula Pedda Venkata Subbaiah
South	:	Bazaar
West	:	Chabolu Lingaiah
North	:	Saki Obulamma and Allisaheb

11. The total extent purchased by the plaintiff is 47 2/3 square yards and the boundary owners mentioned in Exs.A1 and B3 are not being tallied on south of plaint schedule house. However, there is no dispute regarding identity of the property and the southern boundary is Midde of Subbarao as on the date of Ex.A1 i.e., 01.02.1989 whereas DW.1 admitted that the site on the southern side of plaint schedule house of AB wall of Exs.A1 and A4 was purchased by them under Ex.B3 dated 21.01.1948. If that is the case, there must be a recital in the sale deed itself describing the property covered by Ex.A1 as one of the boundaries which is exclusive of AB wall, wherein the plaintiff is claiming exclusive right. But a vague observation is made which creates a doubt whether Ex.B3 document relates to the vacant site of the defendants situated on the south of AB wall of Ex.A4 plaint plan. But, the doubt expressed by the trial Court is not sufficient however it may be strong, it would not displace the proof. In any view of the matter, the trial Court concluded that the plaintiff is the exclusive owner of AB wall and the defendants have no right in the wall shown as AB in the plaint plan. This was affirmed by the appellate Court in A.S.No.27 of 2010 by the Senior Civil Judge, Markapur. Therefore, the findings recorded by both the trial Court and the appellate Court are purely based on evidence on record. Therefore, I find no perversity in the judgment of both the Courts below since the same is confined to evidence on record and did not consider any extraneous evidence to arrive at such a conclusion.

12. In the absence of any perversity in a judgment of the trial Court and the first appellate Court, this Court need not interfere while exercising power under Section 100 C.P.C. which is limited to a substantial question of law as held by **Union of India v. Mohammed Ahmed Ibrahim**^[1]. As I find no substantial question of law in the Second Appeal, the same liable to be dismissed at the stage of admission.

13. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

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

M.SATYANARAYANA MURTHY, J

Date:08.08.2016
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^[1] AIR (1992) SC 778