

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

S.A No.496 of 2011

&

S.A No.908 of 2013

Date:24.08.2016

S.A No.496 of 2011

Between:

Terrapareddy Subrahmanyam
and others.

... Appellants.

AND

Yerrapareddy Polaiah

...Respondent.

S.A No.908 of 2013

Between:

Yerrapareddy Polaiah

... Appellant.

AND

Terrapareddy Subrahmanyam
and others.

...Respondents.

The Court made the following :



THE HON'BLE SRI JUSTICE S. RAVI KUMAR

S.A No.496 of 2011

&

S.A No.908 of 2013

COMMON JUDGMENT:

These two appeals are filed questioning judgment & decree dated 21-02-2011 in A.S.No.18/2009 on the file of V Additional District Judge, Nellore.

2. Appellants in S.A.No.496/2011 are defendants, appellant in S.A.No.908/2013 is plaintiff in O.S.No.286/2003 on the file of Principal Junior Civil Judge, Nellore. They are hereinafter referred to as plaintiff and defendants as arrayed in the suit.

3. Plaintiff filed the above suit for relief of permanent injunction. Trial Court, on a consideration of oral and documentary evidence of both parties, granted permanent injunction in favour of plaintiff. Questioning the same, defendants preferred appeal to the District Court and V Additional District Judge, Nellore, on a reappraisal of entire evidence of both parties, confirmed the findings of the trial Court and dismissed the appeal. Against the dismissal of their appeal, defendants preferred Second Appeal No.496/2011 and in respect of some adverse findings against the plaintiff in respect of Ex.A4-proceedings, plaintiff preferred S.A.No.908/2013.

4. Both these appeals are coming for admission. According to defendants, the following are the substantial questions of law that are involved in S.A.No.496/2011:-

- a) Whether the lower appellate Court did not commit an error in confirming the judgment and decree of trial Court granting permanent injunction having held that neither the nor the respondent proved possession over the plaint schedule property by placing reliable evidence to the satisfaction of the Court?
- b) Whether the Court below did not commit an error in not dismissing the suit filed by the respondent for permanent injunction having held that the plaintiff failed to prove his possession in the plaint schedule property?
- c) Whether the first appellate Court did not commit a grave error in rendering a finding in para 12 of the judgment in favour of the respondent plaintiff having rightly observed that in exhibit A4 i.e., the delivery warrant of the Court bailiff in O.S.No.826 of 97 it was recorded that appellants 1 and 2 herein were in possession of the plaint schedule property on the ground they did not approach the execution Court to determine their rights ignoring the fact that the appellants herein were not parties to the said suit and they have no knowledge about the respondent obtaining a collusive *exparte* decree?
- d) Whether the Court below is justified in ignoring exhibit B1 registered sale deed dated 19.09.1990 where under the deceased 1st defendant purchased item 1 of the plaint schedule property from Mangamma, who was admittedly the owner of the property in the absence of any plea by the respondent plaintiff disputing the same? In the light of the same whether the Court below did not commit an error in placing reliance on exhibits A3 & A4, the *exparte* collusive decree for specific performance obtained by the plaintiff against the said Mangamma by instituting O.S.No.286 of 97 on which date she ceased to be the owner?
- e) Whether the judgment of the first appellate Court is sustainable being contrary to the settled proposition of law that the plaintiff has to stand or fall on the strength of his own case and he cannot depend on the weakness of the case of the defendant ?
- f) Whether the first appellate Court is justified in drawing adverse inference against the Defendants/Appellants on the ground that the defendant Nos.2 & 3 were not examined ignoring the evidence of the 3rd defendant?

- g) *Whether the finding of the First Appellate Court in Para 13 of the judgment that the plaintiff has got title to plaint schedule the property without there being any issue on the question of title that to by drawing a presumption in favour of the plaintiff which is not available under law?*
- h) *Whether the Court below did not commit an error in ignoring exhibits B7 & B8 Pattadar Passbook and Title Deeds issued in favour of the 1st defendant under the provisions of A.P. Rights in Land and Pattadar Passbooks Act 1971 and the presumption of ownership and possession operating u/s.6 of the Act?"*

5. According to plaintiff, the following are the substantial questions of law:-

- "a) Whether the Lower Appellate Court committed an error in not considering the legal effect of material documents Exs.A3, A5 and A4 which clinchingly established the possession of the plaintiff over the suit schedule property.*
- b) Whether Lower Appellate Court erred in giving adverse finding against the Plaintiff while confirming the decree of trial Court in exercise of its power U/O.41 R.33 R/W.S.96 of CPC.*
- c) Whether Lower Appellate Court erred in holding that plaintiff failed to prove his possession over suit schedule property having exercised its discretion U/S.37 & 39 of Specific Relief Act, 1963 in favour of the Plaintiff."*

6. Both sides submitted their arguments exhaustively touching merits and demerits of the impugned judgment dated 21-02-2011. Most of the facts are not in dispute. One Thammireddy Jayaramaiah purchased an extent of Acs.2-00 cents in the name of his two daughters; Padmamma & Mangamma through registered sale deed dated 30-10-1971 when both Padmamma and Mangamma were minors. According to plaintiff, Mangamma agreed to sell her share in the property i.e., item No.1 to his mother Subbamma and executed an agreement of sale deed dated 01-05-1981, but Subbamma could not

obtain any sale deed during her life time and thereafter, plaintiff filed O.S.No.826/1997 before Principal Junior Civil Judge, Nellore for specific performance of agreement of sale against Mangamma and obtained a decree and also sale deed through process of law and thereafter obtained possession through Court and since then he has been in possession and enjoyment of the same. According to plaintiff, the other daughter of Jayaramaiah, Padmamma sold her share of property i.e., item No.2 through a registered sale deed dated 29-07-2002 and delivered possession and he is in possession and enjoyment of the same. Plaintiff filed the suit O.S.No.286/2003 for injunction as the defendants started interfering with possession of the suit schedule property. Defendants contended that D1 purchased the suit schedule property from Padmamma & Mangamma. According to defendants, Mangamma executed sale deed on 18-09-1990 for item No.1, whereas, Padmamma executed agreement of sale in respect of item No.2 of plaint schedule and they are in possession and enjoyment of the same since 1990. On appreciation of evidence, particularly the delivery of proceedings in E.P.No.265 of 1998 in O.S.No.286/97 marked as Ex.A4, trial Court recorded a finding that plaintiff is in possession and enjoyment of the suit schedule property from that date onwards i.e., 11-4-2002 and decreed the suit. Now the contention of the defendants is that cist receipts, 10 (1) account, pattadar passbooks and other revenue records would reflect the names of defendants as possessor and enjoyer for these two items and both the Courts failed to invoke Section 6 of Andhra Pradesh/Telangnaa State Rights in Land and Pattadar Pass Books Act 1971, to draw presumption.

7. On the other hand, it is the contention of the Advocate for plaintiff, when the delivery was effected through Court and the same was recorded and accepted by Court, the Court proceedings have to be accepted until contrary is proved and as there is no evidence on record to show that proceedings under Ex.A4 are obtained by playing fraud, proceedings under Ex.A4 cannot be discarded and the Courts below rightly accepted them, but while accepting Ex.A4 some unwarranted observations are made against plaintiff.

8. The entire submissions of both sides are about appreciation of evidence by the trial Court and the appellate Court.

9. The powers under Section 100 CPC are very limited and only in case, where a substantial question of law is involved, a second appeal can be admitted but not otherwise. With regard to findings on factual aspects, only in case of perversity, this Court can admit the second appeal, but the defendants and plaintiff, nowhere contended that the findings of the first appellate Court or the trial Court are perverse and all the grounds raised are in respect of factual aspects concerning appreciation of evidence.

10. On a scrutiny of the entire material, I am of the considered view that no question of law is involved in these two appeals much less any substantial question of law to admit the appeals.

11. For the above reasons, both the appeals are dismissed at the admission stage and as a sequel, miscellaneous petitions, if any, pending in these appeals, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:24.08.2016

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