

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

S.A.No.288 of 2016

JUDGMENT:

Heard Sri P.Rajesh Babu, learned counsel for the appellant and Sri K.Venkatesh, learned counsel for the respondent.

2. This Second Appeal is filed challenging the judgment and decree dt.08-03-2016 of the IX Additional District Judge, West Godavari District at Kovvur confirming the judgment and decree dt.23-07-2009 in O.S.No.201 of 2009 on the file of the Junior Civil Judge, Jangareddygudem.

3. The appellant herein is the plaintiff in the suit. She filed the said suit in O.S.No.1051 of 2000 on the file of the Junior Civil Judge, Kovvur initially for perpetual injunction restraining the respondent from interfering with her alleged peaceful possession and enjoyment of the suit schedule property. The suit schedule property consisted of two items (1) Ac.3.00 cts in R.S.No.556/3 of Kotha Pattiseema village, Polavaram Mandal and Ac.1.67 cts in R.S.No.296/2 of the same village.

4. The appellant is the sister of the respondent.

5. After the suit was filed in the Principal Junior Civil Judge, Kovvur, it was transferred to Junior Civil Judge, Jangareddygudem by the District Court, West

Godavari District, Eluru vide orders in Dis No.7197 dt.31-12-2008.

6. According to the appellant, her father Papaiah gave item-1 of the plaint schedule to her towards *pasupu kunkuma* by announcing during her marriage; and he also executed registered will on 01-06-1976 giving item-2 of the plaint schedule property to her. She stated that she is the only issue and the respondent is not the son of her father Papaiah. She alleged that she was enjoying the plaint schedule property since her marriage and also perfected her right to the property by way of adverse possession. She alleged that the respondent was proclaiming in the village that he would dispossess her from the said property and that is why she filed the suit.

7. The respondent filed a Written Statement stating that the property is joint family property of the respondent and his brothers and father by name Appanna. He denied that the appellant had any title, possession or enjoyment of the plaint schedule property at any point of time. He also stated that she never cultivated or raised any crops therein. He stated that the father of the appellant is the brother of Appanna and the father of the appellant Papaiah has nothing to do with the plaint schedule property. He alleged that the appellant is the illegitimate daughter of Papaiah. He stated that the

appellant was brought up as their own sister by the respondent and her marriage was also performed by them. He stated that although there was a promise to give the plaint schedule property to the appellant, possession was never delivered. He stated that he and his brothers used to cultivate the schedule property by raising paddy crop and used to give some share in the yield to the appellant out of affection. He stated that in 1986, the appellant needed money and received Rs.60,000/- from the respondent and relinquished her interest if any in the schedule properties and this was also reduced into writing on 03-08-1986.

8. The trial Court framed two issues 1) Whether the plaintiff is entitled for permanent injunction against the defendant and 2) To what relief?

9. The appellant examined herself as P.W.1 and marked Exs.A-1 to A-3 and she also examined P.Ws.2 and 3. Respondent examined himself as D.W.1 and marked Exs.B-1 to B-22. He also examined D.Ws.2 and 3.

10. By judgment dt.23-07-2009, the trial Court dismissed the suit. It held that the documents filed by the appellant relate to the period prior to 1986 and thereafter, she did not file any document to show her possession of the plaint schedule property. It also held that the respondent filed Ex.B-1 to B-6 and Exs.B-19, 20 and 22,

adangals for Faslis 1408 to 1417, and these documents revealed that Appanna, father of the respondent, was the pattedar and the respondent was the cultivator. It therefore held that appellant was not entitled to the relief of perpetual injunction as she failed to prove her possession on the date of filing of the suit.

11. Challenging the same, A.S.No.64 of 2009 was filed. It was later transferred to the Court of IX Additional District Judge, West Godavari at Kovvur and renumbered as A.S.No.190 of 2011.

12. The appellate Court also confirmed the findings of trial Court. It observed in para-7 (iv) that the appellant had not cross examined D.Ws.1 and 2 and had not argued the matter, and that in the grounds of appeal, it was mentioned that no notice was given to the appellant after transfer of suit to the Junior Civil Judge's Court, Jangareddygudem and that was why she could not cross examine D.Ws.1 and 2.

13. Aggrieved by the said judgment and decree, this Second Appeal is preferred.

14. Learned counsel for the appellant contended that the appellant had no notice after the suit was transferred to the Court of Junior Civil Judge, Jangareddygudem, therefore she could not cross examine D.Ws.1 and 2 and that she lost the chance to

challenge

Ex.B-17, the relinquishment deed relied upon by the respondent. He also contended that Ex.B-17 is an unregistered document and therefore the Court below erred in placing reliance on it.

15. These contentions are refuted by the learned counsel for the respondent and he supported the judgment and decree passed by the Court below.

16. I have noted the submissions of both sides.

17. In the judgment of the trial Court in para-5, it is specifically stated that the trial Court heard the arguments of both sides. This fact has not been disputed by filing any review application before the trial Court by taking a plea that the suit was decided without hearing the appellant/plaintiff. It may be that the lower appellate Court had recorded that there is no material on record to show that after transfer of the suit to the Court of Junior Civil Judge, Jangareddygudem and after its renumbering, notice was given to the appellant. But if the appellant's counsel was heard before judgment in the suit was pronounced by the transferee Court and this point was not canvassed before the trial Court at the time of hearing of the suit or subsequently by way of review petition, the appellant is deemed to have waived this plea.

18. The suit filed by the appellant is one for

perpetual injunction.

19. Therefore, it is the incumbent upon the appellant to establish her possession of the plaint schedule property even on the date of filing of the suit. Both the trial Court as well as the lower appellate Court have concurrently found that Exs.A-1 to A-3 filed by the appellant do not establish her possession of the plaint schedule properties on the date of filing of the suit. This concurrent finding of fact is not seriously contested by the appellant. The relief of perpetual injunction can be granted to the appellant only if she proves her possession of the plaint schedule properties on the date of filing of the suit and not otherwise.

20. Therefore, I am of the opinion that both the Courts below have rightly held that the appellant is not entitled to perpetual injunction against the respondent.

21. In this view of the matter, I do not find any substantial question of law arising for consideration in the Second Appeal. Therefore, the Second Appeal is dismissed. No costs.

22. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-07-2016

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