

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.312 of 2000

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Date:10.02.2016

Between:

Kalluru Chennakrishna Reddy
and others.

... Appellants.

AND

Kalluru Balakrishna Reddy

...Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.312 of 2000

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JUDGMENT:

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This appeal is preferred against decree & judgment dated 17-01-2000 in A.S.No.5/1997 on the file of Senior Civil Judge, Rajampet, Kadapa District whereunder decree & judgment dated 18-12-1996 in O.S.No.186/1989 on the file of Munsif Magistrate (presently Junior Civil Judge) Badvel was confirmed.

2. Appellants herein are the unsuccessful plaintiffs (Legal Representatives of Kalluru Chenna Krishna Reddy, who filed the suit as sole plaintiff) in both the Courts. Plaintiffs filed the above referred O.S.No.186/1989 for relief of permanent injunction in respect of Acs.02-84 cents of land in Patta No.1035 in Survey

No.1178. Plaintiffs contended that suit property is the self acquired property of late Kalluru Chenna Krishna Reddy having purchased under a registered sale deed and he was in possession and enjoyment of the said property.

On the other hand, it is the contention of the defendant that the suit property is the joint family property of the deceased-first plaintiff and himself and the first plaintiff has no right to claim injunction in respect of joint family property against a co-owner. On these contentions and rival contentions, trial Court conducted trial, during which four witnesses were examined and 19 documents were marked on behalf of plaintiffs, whereas five witnesses were examined and three documents were marked on behalf of defendant. On a over all consideration of oral and documentary evidence, trial Court held that first plaintiff failed to prove that he is the absolute owner of the suit schedule property having acquired independently and dismissed the suit. Aggrieved by the dismissal of the suit, plaintiffs preferred the appeal to the first appellate Court i.e., Senior Civil Judge, Rajampet and the appellate Court, on a reappraisal of entire evidence, up held the findings of the trial Court and dismissed the appeal. Aggrieved by the same, present second appeal is preferred.

3. This Court, on 23-03-2001 admitted this appeal treating the following as substantial questions of law:-

“1. Whether the Courts below were correct in going into the questions whether there was a partition or not between the plaintiff and defendant, whether there was a relinquishment of their interests by the plaintiffs or not in a suit for a permanent injunction when the only question to be considered by the Court is whether the plaintiffs were in possession of the suit land on the date of the filing of the suit.

2. Whether the lower Courts were correct in elaborately discussing about the nature of the property, whether it was self-acquired or not whether

it was a joint family property that in a suit for a bare injunction.

3. *Whether the Courts below were correct in not acting upon Ex.A.14 the Registered sale deed in the name of the father of the appellants, Exs.A.10 to A.12 the 10 (1) No.2 & 3 accounts, Exs.A.3, A.4 the cist receipt which shown the possession of the appellants on the date of the suit.?*

4. Heard arguments.

5. Now the point that would arise for my consideration in this second appeal is whether substantial questions of law that are urged on behalf of the appellants-plaintiffs are tenable and whether there are any grounds to interfere with the concurrent findings?

6. **Point:-** According to plaintiffs, plaint schedule properties are the self-acquired properties of K. Chenna Krishna Reddy. Advocate for appellants submitted that evidence on record would clinchingly show that plaintiffs are in possession of suit schedule property as on the date of the suit, but both lower Court and first appellate Court, instead of granting permanent injunction, dismissed the suit on the ground that plaintiffs have to file a suit for declaration and the findings of the lower Court and first appellate Court are contrary to the settled law and therefore, liable to be set aside. As seen from the record, plaintiffs have approached the Court with a specific plea that the suit schedule properties are the self-acquired properties of K. Chenna Krishna Reddy and that they are in possession of the said properties. Therefore, it is the burden of the plaintiffs to prove first that the suit properties are the self-acquired properties. When defendant took a plea that the properties are the joint family properties and contended that he is co-owner of the property along with first plaintiff, the burden is more on the plaintiffs to show that suit property is self-acquired property of late K. Chenna Krishna

Reddy. As many as 19 documents are marked on behalf of the plaintiffs and out of that Ex.A14 is the certified copy of the sale deed dated 14-08-1970 through which, first plaintiff purchased the property. Out of the witnesses examined on behalf of both parties, D.W.5 who is the mother of defendant and deceased-first plaintiff is an important and curtail witness. She deposed that the suit properties are purchased with the joint family funds, but the document is obtained in the name of first plaintiff being elder son. By the date of commencement of trial, first plaintiff was not alive and the defendant got marked the certified copies of the evidence of first plaintiff in the earlier proceedings as Exs.B2 & B3 in which, there are certain admissions with regard to the nature of the property. Considering the evidence of D.W.5 and the admissions of first plaintiff in the earlier proceedings, both trial Court and appellate Court have disbelieved the version of the plaintiffs and dismissed the suit. I do not find any wrong appreciation of facts and evidence either by trial Court or by the first appellate Court, nor any perversity in the findings of these two Courts. The above referred grounds are only in respect of factual aspects particularly appreciation of evidence with reference to 10 (1) Account and cisth receipts. Both trial Court and appellate Court have appreciated these documents with reference to over all evidence of both parties and rightly discarded them, therefore, the contention of the appellants-plaintiffs in respect of those documents cannot be accepted.

7. On a scrutiny of the entire material, I am of the considered view that no law is involved leave alone substantial question of law and the above referred grounds are only in respect of factual aspects and therefore, the appeal is devoid of merits.

8. For these reasons, second appeal is dismissed but under the circumstances without costs.

9. As a sequel, miscellaneous petitions, if any, pending in this Second Appeal, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:10.02.2016

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