

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1558 of 2011

JUDGMENT:

This second appeal is preferred challenging judgment and decree in A.S.No.3 of 2008 dated 18.07.2011 on the file of Principal District Judge, R.R.District at L.B.Nagar, Hyderabad, whereunder judgment and decree in O.S.No.1816 of 2005 dated 29.11.2007 on the file of II Additional Senior Civil Judge, R.R.District at N.T.R.Nagar, Hyderabad, is confirmed.

2. Appellant herein is the unsuccessful plaintiff in both the Courts, who filed O.S.No.1816 of 2005 to declare that he is absolute owner of plot bearing No.18, admeasuring 186 sq. yards situated at Turkapally Village, Malkajgiri Mandal, R.R.District, contending that he purchased the said property from PW.2 under an unregistered sale deed dated 25.02.1986. Both trial Court and appellate Court on consideration of oral and documentary evidence produced on behalf of both parties, dismissed the suit holding that plaintiff failed to prove his title over the suit schedule property. Aggrieved by the same, present second appeal is preferred.

3. Heard advocate for appellant.

4. Advocate for appellant submitted that findings of the Courts below are perverse so far as Ex.A.1-sale deed is concerned and that is the substantial question of law involved in the present second appeal. In support of his

contention he relied on a decision of Apex Court in **R.V.E.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and another**^[1], it is observed that “in a suit for recovery of possession, onus of proof will shift on defendant when plaintiff has been able to create a high degree of probability in respect of his title”. Referring the above decision, advocate for appellant contended that plaintiff has discharged his burden by creating high degree of probability.

5. I have perused the judgments of both the courts and the material papers filed along with second appeal. The main controversy in the suit and also in the appeal is whether plaintiff has proved his title in respect of suit schedule property. Admittedly, the suit property belongs to PW.2 and the document in favour of plaintiff is only an unregistered sale deed. As seen from the material, the entire contention of plaintiff is that defendants have no better title, therefore plaintiff's title has to be upheld by accepting Ex.A.1. Both trial Court and appellate Court have not accepted that proposition on the ground that a decree cannot be passed by taking the weakness of opposite party into consideration. The proposition now advanced by advocate for appellant is not applicable to the case on hand because there is no material to show that plaintiff has been able to create a high decree of probability by virtue of Ex.A.1 document to claim title over

the suit schedule property. On a scrutiny of the material, I am of the view that no question of law is involved leave alone substantial question of law to admit the second appeal. Further, the contention that the findings of the trial Court and appellate Court are perverse cannot be accepted even prima facie as both the Courts concurrently held that plaintiff has not produced any single scrap of paper to show that he was in possession and enjoyment of the suit property from 25.02.1986 till 05.02.2005. Considering these aspects, I am of the view that there is no substantial question of law to admit, therefore, second appeal is liable to be dismissed.

6. For these reasons, second appeal is dismissed at admission stage.

7. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

5th January 2016.

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[\[1\]](#) (2003) 8 SCC 752