

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1 of 2000

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Date:19.01.2016

Between:

Sunkara Sattemma

... Appellant.

AND

Ganji Chinapothuraju and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.1 of 2000

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JUDGMENT:

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This appeal is preferred against decree & judgment dated 30-09-1999 in A.S.No.12/1994 on the file of Senior Civil Judge, Tadepalligudem.

2. The appellant herein filed O.S.No.219/1987 before the Principal Junior Civil Judge, Tadepalligudem seeking relief of permanent injunction in respect of plaint schedule property. Trial Court, on appreciation of oral and documentary evidence produced by both parties, partly decreed the suit by granting interim injunction in respect of western half of Items 1 & 2 of plaint schedule properties and dismissed the suit in respect of remaining part. Aggrieved by the dismissal of suit in respect of other part, plaintiff preferred

appeal to the appellate Court and the Senior Civil Judge, Tadepalligudem, on a reappraisal of evidence of both parties, held that plaintiff is not even entitled for injunction over the western part of the suit property and the suit should have been dismissed in its entirety, but as the defendants have not preferred any appeal and not challenged the injunction granted in respect of western portion, as they have also not preferred any cross-objections, he has confirmed the judgment & decree of the trial Court, which has become final. Not satisfied with the findings of the appellate Court and denial of permanent injunction in respect of other part of the property, plaintiff preferred the present appeal.

3. This Court admitted the second appeal treating the following grounds as substantial questions of law:-

- “a). Whether the Court below is justified in refusing the injunction to the eastern portion of plaint schedule items 1 & 2 to appellant when defendants admit the possession of appellant in their written statement. Therefore, the same is error in the judgment;*
- b) Whether lower appellate Court has got jurisdiction and justified in refusing to given credence to Exs.A1 & Ex.A2 issued by competent Revenue Official and survey officials when the same were not challenged by the defendant before settlement officer or District Collector respectively; and*
- c) Whether the lower appellate Court is right in dismissing appeal more so when the injunction in respect of Western portion of plaint schedule items 1 & 2 has become final and no dispute in respect of the possession over the eastern side of items 1 & 2 of the plaint schedule property.”*

4. Heard arguments.

5. Advocate for appellant submitted that both the Courts are not

justified in refusing injunction in respect of eastern part of Items 1 & 2 of plaint schedule properties in spite of ample evidence to prove plaintiff's possession. He further submitted that documents-Exs.A1 & A2, which are issued by the competent revenue officials and survey officials, are sufficient to prove possession of the plaintiff, but both the Courts have not properly considered these two documents. He further submitted that both the Courts have committed error in appreciating the material therefore those findings are perverse, thereby the second appeal has to be allowed.

6. On the other hand, Advocate for respondents submitted that Item No.1 of plaint schedule property was purchased by mother of first defendant's wife by name Kommu Nagamma under a registered sale deed dated 28-07-1941 and the property was in continues possession of Nagamma till her death in the year 1979. He submitted that Item No.2 of the plaint schedule property is a self-acquired property of mother of Kommu Nagamma by name Sunakara Arabi in whose favour a patta was granted. He submitted that the said Item No.2 was under possession and enjoyment of Sunkara Arabi till her death and thereafter, it was devolved on Kommu Ngamma.

He submitted that Nagamma had four sons by name Peda Venkanna, Buli Venkanna, Ramulu and Pothuraju and two daughters, who are plaintiff and wife of first defendant.

He submitted that after death of Nagamma, there was a family arrangement between the sons and daughters, wherein it was agreed that the suit schedule property shall be enjoyed by plaintiff and her sister in equal shares and as per that arrangement, western half of Items 1 & 2 were given to plaintiff and eastern half was given to the first defendant's wife and they are in enjoyment of their respective shares and the trial Court, having considered these aspects, which are supported by oral and documentary evidence, partly decreed the

suit and that there are no grounds to interfere with the findings of the trial Court and appellate Court those findings are based on sound reasoning and no substantial question of law is involved.

7. Now the point that would arise for my consideration in this second appeal is whether there is any perversity in the findings of the Courts below to be interfered by this Court?

8. **Point:-** One of the contentions of the Advocate for appellant is that both the Courts have not properly appreciated Exs.A1 & A2-documents. As seen from Ex.A1, it is a patta granted in favour of plaintiff under Patta No.388 in respect of Ac.0-78 cents of land. Admittedly, this property was purchased by Kommu Nagamma in the year 1941 under Ex.B1-document. It is also clear from the evidence that the said Nagamma had four sons and two daughters and in the family arrangement, Items 1 & 2 of plaintiff schedule were given to the plaintiff and her sister i.e., first defendant's wife and both of them have been enjoying their respective half shares i.e., western half and eastern half. When such is the evidence, without explaining how the plaintiff's name is recorded under Patta No.388 for the entire extent, the contention of the plaintiff that she is entitled for injunction on the basis of this Ex.A1 cannot be sustained. Trial Court has examined this aspect minutely and rightly discarded this document, while appreciating the evidence in respect of possession and enjoyment.

9. The next contention of the Advocate for appellant is in respect of Ex.A2-document. This Ex.A2 is a Ryothwari Patta in respect of Item No.2 of plaintiff schedule property and admittedly, this property was assigned to Sunkara Arabi, who is mother of Nagamma and Nagamma succeeded to this property on the death of Arabi and considering the other connecting documents with regard to possession and enjoyment, the trial Court has also not accepted this Ex.A2. I do not find any wrong in the approach of the trial Court in

respect of these two documents i.e., Exs.A1 & A2. Tax receipts are not corroborating with the plea of plaintiff with regard to total enjoyment. Further, family arrangement, which is not disputed, would show that plaintiff is only in possession and enjoyment of half of the plaint schedule property. Both trial Court and appellate Court have rightly appreciated the material on record and there is no perversity in their findings and the objections of the appellant with regard to Exs.A1 & A2 are not at all tenable.

10. For these reasons, I am of the view that there is no substantial question of law involved in this appeal and the substantial question of law raised by the appellant is not at all tenable and the second appeal is devoid of merits.

11. Accordingly, second appeal is dismissed, but under the circumstances without costs.

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

JUSTICE S. RAVI KUMAR

Date:17.12.2015

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