

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Second Appeal No.217 of 2016

Dated 17th June, 2016

Between:

Surakasi Kameswara Rao and others

...Appellants

And

Dalli Ramikrishna Reddy

...Respondent

Counsel for the appellants: Sri A.S.C.Bose

Counsel for the respondent: Sri P.Durga Prasad

The Court made the following:

JUDGMENT:

This second appeal is filed against the concurrent findings of fact rendered by the Courts below.

The respondent/plaintiff filed O.S.No.619 of 1998 in the Court of the learned V Additional Senior Civil Judge, Visakhapatnam for declaration that he is the absolute owner of plaint 'B' schedule property and for consequential relief of putting him in possession of the same after evicting the appellants/defendants and their men.

Appellant No.1 is defendant No.3 and appellant No.2 was defendant No.4 and since he died, in his place appellant No.3 was brought on record as his LR. Appellant No.1 has filed written statement which was adopted by the other defendants. Having regard to the respective pleadings of the parties, the trial Court framed the following issues:

- “1. Whether the plaintiff is entitled for the declaration of his title over the plaint “B” Schedule property?
2. Whether the plaintiff is entitled for a consequential relief of recovery of possession of the B schedule property after evicting the defendants?
3. Whether the plaintiff is entitled for the future profits and if so at what rate?
4. To what relief?”

The respondent/plaintiff examined himself as PW.1 and also got examined defendant No.1 as PW.2, besides examining his neighbouring land owner as PW.3. He got Exs.A1 to A20 and Ex.X1 marked on his side. On behalf of the defendants, defendant Nos.2 to 4 were examined as DWs.1 to 3 respectively and got marked Exs.B1 to B3.

On appreciation of oral and documentary evidence, the trial Court held all the issues in favour of the respondent and accordingly decreed the suit. Feeling aggrieved by the said judgment and decree, the appellants herein have filed A.S.No.70 of 2006. By its judgment, dated 02.12.2015, the lower appellate

court has dismissed the appeal confirming the judgment and decree of the trial Court.

At the hearing, the only submission advanced by Sri A.S.C.Bose, learned counsel for the appellants, is that when there is a serious dispute relating to the issue as to whether the suit schedule property was situated in Survey No.17/4C as claimed by the respondent or in Survey No.17/4B as pleaded by the appellants, the trial Court has committed a serious error in decreeing the suit without there being proper evidence. He has further submitted that without considering this aspect, the lower appellate Court has mechanically confirmed the order of the trial Court.

A perusal of the record shows that in order to prove that the land covered by Ex.A1, on which he has claimed his title is situated in Survey No.17/4C, the respondent has filed Ex.A2, proceedings of ULC, Visakhapatnam, dated 15.02.1992, besides Exs.A5, A6 and A7 pertaining to re-survey of the land. In paragraph-13 of its judgment, the trial Court *inter alia* held as under:

“...The plaintiff to prove that the land covered by Ex.A1 is situated in S.No.17/4C has filed Ex.A2 proceedings dated 15.02.1992 of Urban Land Ceiling, Visakhapatnam which shows that the land is in S.No.17/4C. The plaintiff also filed Ex.A5, Ex.A6 and Ex.A7 documents in support of his plea. Ex.A5 is a copy of application submitted that him on 29.06.2004 to the MRO, Visakhapatnam to re-survey the land. Ex.A6 is copy of challan under which the plaintiff remitted charges to the Government for re-survey of the land. Ex.A7 is a letter of MRO dated 31.07.2004 to the Sub-Registrar, Akkayyapalem, Visakhapatnam with a copy to the plaintiff intimating that the land covered by Ex.A4 sale deed is in S.No.17/4C of Resapuvanipalem village and which is a private land as per the records. Therefore, the admissions of DWs.1 to 3 in their evidence, and the documentary evidence produced by the plaintiff goes to establish that the land covered by Ex.A1 is situated in S.No.17/4C only. Moreover, the Ex.B1 relied upon by the defendants also shows that the land in S.No.17/4C was not acquired by the Government.”

The above extracted findings of the trial Court negate the submission of the learned counsel for the appellants that the trial Court has not considered the documentary evidence in proper perspective. On the contrary, the trial Court has properly construed the documents and rendered a finding of fact which was affirmed in the appeal filed before the lower appellate Court. The jurisdiction of this Court under Section 100 CPC is confined to examining whether any substantial question of law is raised in the second appeal. Re-appreciation of facts and evidence in a second appeal is alien to the jurisdiction of this Court under Section 100 CPC. Nothing is brought out before this Court that the findings rendered by the trial Court as extracted above are not based on facts or evidence or the same are perverse.

In the light of the above discussion, I do not find any merit in the second appeal and the same is accordingly dismissed.

As a sequel to dismissal of the second appeal, SA.MP.No.602 of 2016 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

17th June, 2016
VGB