

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

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THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN

-
PRESENT

-
THE HON'BLE SMT. JUSTICE ANIS

-
SECOND APPEAL No. 397 OF 2005

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Between :

Dumpa Gopala
Reddy

-

... APPELLANT

A N D

Dumpa Seetharavamma and another

...

RESPONDENTS

This Court made the following:

THE HON'BLE SMT. JUSTICE ANIS

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SECOND APPEAL No. 397 OF 2005

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JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'CPC'), is directed against the judgment and decree, dated 17.01.2005, passed in A.S.No.32 of 2004 on the file of the III Additional District Judge (Fast Track Court), Ongole.

2. The appellant is the defendant and the respondents are the plaintiffs before the trial Court. For better appreciation of facts, the parties are hereinafter will be referred to, as they are arrayed before the trial court.

3. The plaintiffs filed the suit for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property consisting of Items 1 to 9 situated at different survey numbers in Narasapur Agraharam Village of Prakasam District.

4. According to the plaintiffs, they are the owners and are in possession of the suit schedule property and the defendant without any manner of right started interfering with their possession. Hence, the plaintiffs are constrained to file the suit.

The plaintiffs also averred that the second plaintiff got Items 3 and 9 of the suit schedule property under registered Settlement deed in the year 1958 through the maternal grandmother of the first plaintiff as she had no issues. Further, after the death of maternal grandmother of the first plaintiff, the first plaintiff's mother, the first plaintiff and her sisters divided the remaining properties and in that partition, the first

plaintiff got Items 1, 2 and 5 to 8 to her share. Thus, the plaintiffs are the absolute owners and possessors of the suit schedule property Items 1 to 9.

5. In the Written Statement, the defendant contended that the suit schedule property is the joint family property and his father/second plaintiff got Ac.12.00 of land situated at their native place Nelatur in the partition between his brother and thereafter he acquired all the suit schedule properties in N.Agraharam village with the sale proceeds thereof, thus the suit schedule property is a joint family property. It is further contended that Items 1 and 5 were given to his sisters towards 'Pasupu Kunkuma' and he is cultivating the said lands as lessee of his sisters. It is also contended that the suit for injunction cannot be maintainable against co-owner, and prayed the Court to dismiss the suit.

6. The trial Court, basing on the pleadings, framed two issues. During the course of trial, on behalf of the plaintiffs, PWs 1 to 3 were examined and Exs.A.1 to A.5 got marked. On behalf of the defendant, DWs 1 and 2 were examined and Exs.B.1 and B.2 got marked.

7. The trial Court, after considering the oral and the documentary evidence, held that the defendant failed to prove that the suit schedule properties are the joint family properties and also failed to prove that Items 1 and 5 were given to his sisters towards 'Pasupu Kunkuma'. However, the trial Court, by holding that the plaintiffs failed to prove that first plaintiff got Items 1, 2, 4 to 6 and 8 in partition with her sisters and also failed to prove their title and exclusive possession over those items, partly decreed the suit in respect of Items 3, 7 and 9 and dismissed the suit in respect of Items 1, 2, 4 to 6 and 8.

8. Against the dismissal of the suit in respect of Items 1, 2, 4 to 6 and 8, the plaintiffs preferred A.S.No.32 of 2004 on the file of the III Additional District Judge (Fast Track Court), Ongole. After considering

the evidence on record, the first appellate Court held that plaintiffs 1 and 2 are in lawful possession of Items 1, 2, 4 to 6 and 8 and the defendant failed to prove that the suit schedule properties are joint family properties, and accordingly allowed the appeal by modifying the judgment and decree of the trial Court. The first appellate Court also granted permanent injunction restraining the defendant from interfering with the Items 1, 2, 4 to 6 and 8 of the suit schedule property. Challenging the same, the present Second Appeal is preferred.

9. This Court admitted the appeal on 08.04.2005 on the following substantial questions of law raised in the grounds of appeal at Paras 3, 4 and 5:

- “3. The lower court failed to note that the suit properties are the joint family properties and therefore the suit filed by the plaintiffs for permanent injunction against a co-owner is not maintainable in law.
4. The lower Courts failed to see that in respect of Joint family property when a sharer sets of partition of the property the burden of proof establishing partition by metes and bounds and the plaintiffs in the suit has not adduced any acceptable evidence of partition and therefore the suit of the plaintiffs for permanent injunction is not maintainable in law.
5. The decision of the lower appellate Court in allowing the appeal in respect of items 1, 2 and 4 to 8 of the suit properties is illegal and perverse, in that it failed to consider important evidence having direct bearing on the disputed issue and in not considering the documentary evidence filed and proved by the defendant in Ex.B1 and B2.”

10. The learned counsel for the appellant argued that the trial Court granted permanent injunction against Items 3, 7 and 9 and dismissed the suit for the remaining suit schedule properties; that the plaintiffs failed to prove as to how they got the suit schedule properties and how they are in possession of the suit schedule properties; that there is no evidence to prove that the plaintiffs got title to the suit schedule property; that the appellant/defendant is the co-owner of the suit

schedule property along with the plaintiffs, as such the plaintiffs are not entitled for grant of permanent injunction, and therefore, prayed the Court to set aside the judgment of the first appellate Court by allowing the appeal.

11. On the other hand, the learned counsel for the respondents argued that there is no dispute regarding the title and possession of the plaintiffs over the suit schedule property; that the defendant failed to prove that Ac.12.00 of land was merged with the suit schedule property and if at all, the appellant proved the same, he will get share in the said property but not in the suit schedule property, which exclusively belongs to the plaintiffs; that against the judgment and decree of the trial Court in O.S.No.952 of 1999, the defendant has not filed any appeal, as such the injunction against Items 3, 7 and 9 and also the said judgment and decree have become final, and finally, prayed the Court to dismiss the second appeal.

12. Now, the point that would arise for my consideration in this appeal is whether there is any substantial question of law involved in this appeal?

13. **POINT:**

On perusal of the evidence produced by both sides in O.S.No.952 of 1999, the trial Court observed that the defendant failed to prove that the plaint schedule properties are joint family properties and also failed to prove that Items 1 and 5 were given to his sisters towards 'Pasupu Kunkuma'. There is no dispute regarding the relationship of Audemma with the first plaintiff and there is no dispute that her properties were partitioned and in that partition, Items 2, 4 and 6 to 8 fell to the share of first plaintiff since the defendant failed to prove that he is the lawful owner of the above items.

14. Further, Ex.B.2 auction notice filed by the appellant/ defendant

also shows that some of the items i.e., Items 4, 5, 6 and 9 and other properties were mortgaged in favour of the Co-operative Central Bank by the second plaintiff and under Ex.B.2 auction notice, the bank informed the same to the second plaintiff and others. A perusal of Ex.B.2 also shows that the second plaintiff mortgaged the above items. The document filed by the defendant under Ex.B.2 further supports the case of the plaintiffs. Therefore, the plaintiffs are the absolute owners and possessors of the plaint schedule properties and the trial Court rightly held about the lawful possession of the plaintiffs over Items 3, 7 and 9 and the first appellate Court also rightly held about the lawful possession of the plaintiffs over Items 1, 2, 4 to 6 and 8, and the said findings of both the Courts need no interference. Further, the appellant failed to prove that he is the co-owner of the suit schedule properties. Therefore, the suit filed by the plaintiffs is maintainable and there is no need for the plaintiffs to seek the relief of declaration of title to the suit schedule property.

15. For the reasons stated above, the substantial questions of law urged on behalf of the appellant/defendant is not tenable and in fact there is no substantial question of law involved in this case and all the submissions are based on the factual aspects and on the oral and documentary evidence. Hence, the Second Appeal is devoid of merit and is liable to be dismissed, as no substantial question of law involved in this case.

16. Accordingly, the Second Appeal is dismissed. No costs. Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

ANIS, J

APRIL 28, 2016.

Anr

THE HON'BLE SMT.JUSTICE ANIS

SECOND APPEAL No. 397 OF 2005

28.04.2016

Anr