

HONOURABLE SRI JUSTICE S.RAVI KUMAR

S.A. No.375 OF 2005

Dated 1-6-2016

Between:

Pothana Seshagiri Rao.

...Appellant.

And:

Maddipati Satyavathi.

...Respondent.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

S.A. No.375 OF 2005

JUDGMENT:

This appeal is preferred against judgment and decree dated 24-9-2004 in A.S.No.94 of 1997 on the file of Senior Civil Judge, Kovvur, whereunder judgment dated 31-10-1997 in O.S.No.293 of 1990 on the file of I Additional District Munsif (Presently I Additional Junior Civil Judge), Kovvuru, is reversed.

Parties herein are referred to as 'plaintiff and defendant' as arrayed in the suit for better understanding and convenience sake.

Appellant herein is defendant in the above referred suit O.S.No.293 of 1990 which is filed for relief of permanent injunction. One M.Satyavathi wife of Venkata Rao filed the said suit seeking relief of perpetual injunction restraining the appellant herein from interfering with possession and enjoyment of Ac.5.06 cents of land which is plaint schedule land. Trial court dismissed the suit by judgment dated 31-10-1997 and plaintiff preferred appeal before Senior Civil Judge, Kovvur which is appellate court and the appeal was allowed through judgment dated 24-9-2004 and permanent injunction was granted in favour of plaintiff. Defendant preferred second appeal No.375 of 2005 and this court by order dated 3-12-2011 allowed the second appeal and dismissed the

plaintiff's suit. Aggrieved by the judgment of this court, plaintiff filed S.L.P.(C) 8720 of 2012 which was admitted and numbered as Civil Appeal No.5922 of 2014 and the Honourable Supreme Court remanded the matter to the High Court holding that High Court allowed the appeal without framing substantial questions of law and requested this court to frame the substantial questions of law afresh and hear the appeal then decide it on merits. After remand, this court after hearing both sides, framed the following as substantial questions of law.

- 1) *Whether the suit for perpetual injunction by the defendant against the true owner on the strength of an agreement of sale which does not convey right, title and interest in the property, is not maintainable?*
- 2) *Whether the Court below erred in invoking the provision of Section 53A of the Transfer of Property Act though the suit is for a bare perpetual injunction and the plaintiff had failed to seek the relief of specific performance either in the present suit or by instituting a separate suit, which is a condition precedent for invoking the said provision of law?*
- 3) *Whether the Court below erred in granting an injunction to the plaintiff, who is a vendee under the agreement of sale, even though the plaintiff had failed to establish her readiness and willingness to perform her part of the contract and had failed to seek the relief of specific performance of the agreement.*

Heard both sides.

Advocate for defendant submitted that plaintiff prayed for relief of perpetual injunction on the strength of alleged agreement of sale without seeking relief of specific performance and as such, the suit itself is not maintainable. He further submitted that there was no written agreement of sale and the claim of plaintiff is based on an alleged oral sale agreement. He further submitted that first appellate court on surmises and

conjectures without properly examining the oral and documentary evidence invoked the doctrine of part performance and decreed the suit which is against the principles of law. He further submitted that to invoke Section 53-A of Transfer of Property Act, there must be a written agreement and something must have been done in furtherance of such written contract and then only under Section 53-A, doctrine of part performance can be applied. He further submitted that when the defendant is admittedly owner of the suit property, no injunction can be granted against a true owner as a permanent relief. He further submitted that first appellate court wrongly interpreted the principles of law and granted injunction and the findings and the relief granted have to be declared as perverse.

On the other hand, advocate for plaintiff submitted that the suit for mere injunction is maintainable and according to material on record, defendant agreed to sell a total extent of Ac.15.00 for a sum of Rs.45,000/- at the rate of Rs.3,000/- per acre and though four sale deeds were drafted, only three were registered and as the defendant refused to register fourth one, a dispute was raised before Venkata Swamy Naidu and others who advised the defendant to execute sale deed after receiving another sum of Rs.10,000/- and accordingly, plaintiff deposited Rs.10,000/- with Venkata Swamy Naidu but the defendant postponed registration. He further submitted that entire Ac.15.00 was delivered, and as the plaintiff is in possession of the property, she is entitled for injunction and the first appellate court rightly granted that relief and that there are no grounds to interfere.

Now the point that would arise for my consideration in this appeal is whether the findings of the first appellate court are contrary to law and perverse in nature and the grounds of substantial

questions of law as framed are made out.?

POINT:

It is the specific case of plaintiff that defendant is owner of entire plaint schedule property and also adjoining Ac.10.00 of land in total Ac.15.06 cents. According to her, she and her husband agreed to purchase the entire Ac.15.06 cents of land for a sum of Rs.45,000/- and that defendant entered into an agreement with the plaintiff and her husband in the year 1978 itself. According to plaintiff, she paid Rs.20,000/- at the time of agreement, Rs.10,000/- on one occasion, and Rs.14,000/- on another occasion i.e., in December, 1981 and the entire property was delivered. According to plaintiff, four sale deeds were drafted for the entire Ac.15.06 cents and two sale deeds were executed in December, 1981, one in favour of plaintiff's father and other in favour of plaintiff's brother's wife. According to plaintiff, third sale deed was also registered on 24-12-1981, another sale deed for Ac.5.06 cents was drafted and when calculation was made, a sum of Rs.4,000/- was arrived as balance sale consideration including interest and plaintiffs paid the said amount but defendant did not come forward to register the document on the contrary he demanded more amount. According to plaintiff, when the matter was referred to elders, namely Venkata Swamy Naidu and others they decided that plaintiff has to pay extra amount of Rs.10,000/- for which plaintiff was ready but defendant did not receive that amount, therefore, that amount was deposited with Venkata Swamy Naidu and as the defendant is interfering with the possession, she constrained to file the suit for injunction.

On the other hand, it is the case of defendant that the suit for mere injunction is not maintainable without seeking specific performance on the basis of alleged oral agreement. Defendant contended that he

never agreed to sell plaint schedule property to plaintiff. According to defendant, plaintiff's husband wanted to purchase the plaint schedule property but he failed to procure required amount of Rs.15,000/- at the time of execution of other three sale deeds. Defendant also contended that plaintiff or her husband were never put in possession of plaint schedule property and there was no mediation at any point of time and defendant has no knowledge of deposit of Rs.10,000/- with Venkata Swamy Naidu and plaintiff is not in possession of plaint schedule property, and she is not entitled for the relief of permanent injunction.

On these contentions, trial court conducted trial during which, six witnesses are examined, 9 documents are marked on behalf of plaintiff whereas two witnesses are examined and two documents are marked on behalf of defendant. On an oral all consideration of oral and documentary evidence, trial court dismissed the suit holding that the plaintiff is not in possession of suit schedule property and that the suit property is in possession of defendant after tenants were evicted from the schedule property. Trial court held that the suit is not maintainable without seeking relief of specific performance. It is clear from the evidence on record that one Seshu was in possession of the suit schedule property as a tenant and defendant filed A.T.C. seeking eviction of said Seshu and the Special Officer under the provisions of Tenancy Act, ordered for eviction of said Seshu and property was delivered to defendant through court as per Ex.B.1 proceedings dated 1-7-1992. Trial court while taking this part of evidence into consideration, disbelieved the version of plaintiff with regard to possession. Witnesses are examined on behalf of plaintiff, mainly spoke about the alleged oral agreement, and with regard to possession, their evidence is not of much use. First appellate court

discarded Ex.B.1 proceedings on the ground those proceedings are collusive. As seen from the record, nothing is pleaded on behalf of plaintiff with regard to Ex.B.1 proceedings but still appellate judge recorded that those proceedings are collusive. With regard to other findings of first appellate court that the proceedings under Ex.B.1 are hit by doctrine of *lis pendent* is an erroneous finding because those proceedings are separate and nothing to do with the injunction suit. Even in a case where tenant approached the civil court for injunction, such injunction will be in force till the tenant is evicted under due process of law. Here as seen from Ex.B.1 proceedings, one Seshu was in occupation of property as tenant of defendant and for his eviction, defendant filed A.T.C.No.36 of 1989 and on the basis of eviction order, defendant filed E.P.No.6 of 1992 in the said A.T.C. and in that E.P., court Amin delivered possession to defendant on 1-7-1992. So, from this, it is clear that plaintiff is not in possession of this plaint schedule property by the date of filing of the suit. The first appellate court without properly examining the material and also legal principles on presumptions held that it is a collusive one. When there are court proceedings, those cannot be ignored unless convincing evidence is placed before the court to discard them, particularly, when they are discarded on the ground of collusion. As already referred above, there is no plea of collusion nor there is any material to show that the proceedings under Ex.B.1 were obtained only to overcome the relief in this suit. In the absence of that ignoring such proceedings and recording a finding that they are collusive, in my view, is definitely a perverse finding.

Admittedly, plaintiff has not filed any suit for specific performance enforcing alleged agreement of sale in respect of suit schedule property, therefore, title

is still in the name of defendant, therefore, plaintiff cannot get any rights over it. But here, the plaintiff claimed permanent injunction forever. The learned trial judge has elaborately discussed each and every aspect of the matter including the doctrine of part performance under Section 53 A of Transfer of Property Act and by way of a detailed order refused to grant perpetual injunction. The first appellate court without any convincing reasons reversed such findings on mere presumptions and surmises. The entire evidence produced on behalf of plaintiff is only in support of alleged agreement of sale in respect of suit schedule property since the suit is not for specific performance, their evidence is not much relevant and the trial court rightly discarded their evidence.

One of the contentions of plaintiff is that in one sale deed i.e., Ex.A.3, southern boundary is shown as plaintiff's land and this would indicate and support that the plaintiff schedule property was delivered to plaintiff, but on the basis of recital in the sale deed with regard to boundary, plaintiff cannot claim rights. It is well known proposition that injunction will be granted only to protect a legal right. Here even if the plea of plaintiff is accepted, her legal right is only to enforce the alleged agreement of sale and admittedly plaintiff has not enforced that right, as such, she cannot claim any legal right over the plaintiff schedule property.

Plaintiff filed petition invoking Order 41 Rule 27 C.P.C. to receive certain documents as additional evidence. As rightly objected by advocate for defendant, plaintiff cannot now improve his case through these documents. Scope of appeal is to examine the correctness of the findings of courts below but not to answer the objections that are pointed out by way of additional evidence. According to affidavit of plaintiff as the lower court did not ask for the adnagals they are not filed there. It is for plaintiff to

prove his case it is not for the court to direct the party to produce any documents. The grounds to receive additional evidence as required under Order 41 Rule 27 are not made out and the reasons given in the affidavit is not a valid one to invoke Order 41 Rule 27 C.P.C. Therefore, this application is liable to be dismissed.

As seen from the record, entire plaint is silent as to the date on which possession was delivered to the plaintiff. Even if the alleged oral agreement is correct, remedy of the plaintiff is to enforce that oral agreement and can claim injunction only as a consequential relief if the plaintiff is really intended to invoke the doctrine of part performance of Section 53-A of Transfer of Property Act. But here, the suit is filed for mere injunction and as rightly objected by defendant, suit as filed is not maintainable. All these aspects were elaborately considered by trial court which came to a right conclusion, but the first appellate court on imaginary lines reversed the findings of the trial court which in my view cannot withstand.

On a scrutiny of material, I have no hesitation to hold that the findings of the first appellate court are perverse in nature, therefore, the same are liable to be set aside. Therefore, the points are accordingly held in favour of defendant and against the plaintiff.

In view of my above findings and observations, second appeal is allowed and impugned order dated 24-9-2004 in A.S.No.94 of 1997 on the file of Senior Civil Judge, Kovvur, is set aside by confirming the judgment of the trial court dated 31-10-1997 in O.S.No.293 of 1990 on the file of I Additional District Munsif, Kovvuru. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE

S.RAVI KUMAR

Dated 1-6-2016.

Dvs.

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Dvs