

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL NoS.376 AND 619 of 2012

COMMON JUDGMENT:

These two Second Appeals are filed against the Decrees and common Judgment dt.17.04.2009 in O.S.No.2887 of 2004 and O.S.No.2585 of 2004 on the file of III Additional Junior Civil Judge's Court, Vijayawada, whereby the suit filed by the Smt Kasi Lakshmi Janaki and Sunkara Vijaya Kumari i.e., the plaintiffs in O.S.No.2585 of 2004(defendants in O.S.No.2887 of 2004) was dismissed and the suit filed by the plaintiff in O.S.No.2887 of 2004(defendant in O.S.No.2585 of 2004) for the same relief was decreed and granted permanent injunction restraining the defendants therein i.e., plaintiffs in O.S.No.2585 of 2004 and their men from interfering with the management of the plaintiff therein over Srimadvirat Pothuluri Veera Brahmendra Swamy Temple situated at Nunna Village and its properties.

2. For convenience of reference, the parties to the appeal will herein be referred as ranked in O.S.2585 of 2004 by III Additional Junior Civil Judge at Vijayawada.

3. It is the case of the plaintiffs and defendants in both the suits that they filed suits for declaration that they are the managers of the deity i.e., Srimadvirat Pothuluri Veera Brahmendra Swamy Temple situated at Nunna Village and for consequential relief of permanent injunction restraining the defendants with the management of Srimadvirat Pothuluri Veera Brahmendra Swamy Temple alleging that great grand father of plaintiff in O.S.No. 2287 of 2004 and defendant in O.S.No.2585 of 2004 on the file of III Additional Junior Civil Judge's Court, Vijayawada, by name Rangu Papachary, got constructed Srimadvirat Pothuluri Veera Brahmendra Swamy Temple at Nunna village under his

sole trusteeship about eight decades ago and it was looked after by his successors after his death and by the plaintiff's father in the year 1992, who is no other than the elder brother of the defendants. The plaintiff's father Rangu Seshacharyulu was the sole trustee and the manager of the temple and he died on 23.07.1992 while L.A.O.P.No.309 of 1990 on the file of Principal Senior Civil Judge, Vijayawada, was pending regarding payment of compensation of land belonging to the temple acquired by the Government. One Nunna Yerakareddy Venkata Reddy, S/o Rami Reddy endowed Ac.1.06 cents of agricultural land under registered document executed in favour of plaintiff and represented by the defendant bearing document No.6405/1992 with the Sub-Registrar office, Vijayawada, after the death of Rangu Seshacharyulu. The plaintiff and their mother Rangu Seshamma contested O.P.No.309 of 1990 and they were brought on record as legal heirs of Seshacharyulu and the rival claimants succeeded in the said petition and as such they preferred an appeal A.S.No.1084 of 2004, which is pending for enquiry.

4. Rangu Seshamma died on 14.04.2004 and after death of their mother, the management of the temple was entrusted to father of the plaintiffs and defendant in O.S.No.2585 of 2004 and since then they are managing the property. As the plaintiffs in O.S.No.2585 of 2004 claiming adverse right against the defendant/plaintiff in O.S.No.2887 of 2004, the plaintiff in O.S.No.2887 of 2004 i.e., Rangu Papachary, filed a suit against the defendants/plaintiffs in O.S.No.2585 of 2004 claiming that he is the management trustees of the temple and sought for declaration and for consequential reliefs.

5. Basing on the above pleadings, the trial Court framed the following issues for trial :

O.S.No.2887 of 2004 & O.S.No.2585 of 2004:

i) Whether the plaintiffs are entitled for the declaration that they are the Management trustees of Srimadvirat Pothuluri Veera

Brahmendra Swamyvari Temple, Nunna?

ii) Whether the plaintiffs are entitled to consequential relief of permanent injunction against the defendants and their men, as prayed for ?

iii) To what relief ?

6. A joint trial was conducted and the evidence was recorded in O.S.No.2585 of 2004. During trial, on behalf of plaintiffs, Pws. 1 to 7 were examined and Exs. A.1 to A.13 were marked. On behalf of defendant, Dw.1 was examined and Exs. B.1 to B.9 were marked.

7. Upon hearing argument of both the counsel, the suit O.S.No.2585 of 2004 filed by plaintiffs i.e., Smt Kasi Lakshmi Janaki and Sunkara Vijaya Kumari, was dismissed while decreeing the suit O.S.No.2887 of 2004 filed by Rangu Papachary declaring that he is the managing trustee of the Srimadvirat Pothuluri Veerabrahmendra Swamyvari Devasthanam, Nunna Village and also granted permanent injunction restraining the plaintiffs in O.S.No.2585 of 2004 and defendants in O.S.No.2887 of 2004 and their men from interfering with the management of Srimadvirat Pothuluri Veerabrahmendra Swamyvari Devasthanam, Nunna, by Common Judgment dt. 17.04.2009.

8. Aggrieved by the said Decrees and Common Judgment of the trial Court, the plaintiffs in O.S.No.2585 of 2004 and defendants in O.S.No.2887 of 2004 being unsuccessful before the trial Court preferred Appeal Nos. 147 and 148 of 2009 before VII Additional District Judge (FTC), Vijayawada and the Appellate Court dismissed both the appeals confirming the decrees and common judgment passed by the trial Court, by its Decree and Judgment dt. 18.11.2011.

9. The plaintiffs being unsuccessful through out filed the present Second Appeal Nos.376 and 619 of 2012 under Section 100 of CPC formulating several substantial questions of law. Out of six substantial questions of law, 'a,c & e', which are extracted hereunder are alone

substantial questions of law that would require decision of this Court since the other questions are pure questions of fact and depending on appreciation of evidence.

a) Whether admitted facts need to be proved by the parties?

(c) Whether the finding that plaintiff being women is not entitled to manage the affairs of temple is vitiated for no plea or evidence on the same by defendant ?

(e) Whether payment of cists under Exs. B.3 to B.8 confers title over the Temple to defendant ?

10. **In Re (a):** The first and foremost contention raised by the counsel for appellants/plaintiffs is that when the defendant—Rangu Papagchari, admitted a fact, it need not be proved by the appellants. But, the trial Court did not consider this plea. No doubt, an admitted fact, if it is reduced into writing, need not be proved, in view of Section 58 of Indian Evidence Act.

11. Admissions are two types, one is judicial admission and the another is evidentiary admission. Admissions are not conclusive proof, but the admissions estop the person who made such admission under Section 31 of the Evidence Act. Moreover, the judicial admission is on different footing than the evidentiary admission. When a judicial admission is made in the pleadings or in any document regarding a particular fact in issue, such fact need not be proved, by adducing any amount of evidence, in view of Section 58 of Indian Evidence Act. It is settled law that admission is best piece of evidence, in view of the principle laid down in **Sita Ram Bhau Patil v. Ramachandra Nago Patil**^[1], wherein it was held that:

“Admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Admission may in certain

circumstances, operate as an estoppel. The question which is needed to be considered is what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross examination to tender his explanation and clear the point on the question of admission.

In view of the above, the law on the admissions can be summarized to the effect that admission made by a party though not conclusive, is a decisive factor in a case unless the other party successfully withdraws the same or proves it to be erroneous. Even if the admission is not conclusive it may operate as an estoppel. Law requires that an opportunity be given to the person who has made admission under cross examination to tender his explanation and clarify the point on the question of admission. Failure of a party to prove its defence does not amount to admission, nor it can reverse or discharge the burden of proof of the plaintiff’.

12. In another decision reported in **Nagubai Ammal and others v. B. Shama Rao and others**^[2], wherein it was held that :

“ Admission made by a party is admissible and best evidence, unless it is proved that it had been made under a mistaken belief. While deciding the said case reliance has been placed upon the judgment in Slatterie v. Pooley, wherein it had been observed ‘ what a party himself admits to be true, may reasonably be presumed to be so”.

The aforesaid two judgments along with some other judgments of High Court were considered by the Apex Court in a judgment reported in (2012) 8 SCC 148.

13. Therefore, such stray evidentiary admission is not a conclusive proof and on the strength of such admission, the suit filed by the plaintiffs in O.S.No.2585 of 2004 cannot be decreed. Accordingly, the question is answered against the plaintiffs/appellants and in favour of respondent/defendant.

14. **In Re (c)** : The second contention raised before this Court is that

plaintiff No.1 being a woman is entitled to manage the affairs of the temple and it is not based on any plea or evidence. No doubt, a woman may manage the affairs of the temple, but there are certain admissions in the evidence of PW.1 and 2, the husband of the plaintiff. In the evidence of Pw.1, she admitted that she is not performing the Pooja like Deepadoopa Naivedyams etc., But, PW2, the husband of the plaintiff, clearly testified that he is performing Pooja on behalf of his wife—PW.1. But, it is the constant case of the plaintiffs from the beginning that PW.1 herself performing Deepadoopa Naivedyams, which is proved to be false on the face of the record. When the plaintiffs approached the Court with untrue facts and with unclean hands, she is not entitled to a discretionary relief of declaration under Section 34 of Specific Relief Act, which is purely an equitable and discretionary relief as per law.

15. The plaintiff No.1 as PW.1, miserably failed to produce any evidence that she is actually managing the temple after the death of her father and mother, though she is a woman, competent to manage the temple unless she is not allowed by customary practice prevailing in the temple. But, she failed to establish that she is managing the temple by performing required pooja to the deity. In such case, no evidence is necessary to discredit the testimony of Pw.1 and 2, whose evidence is self contradictory. In those circumstances, absence of any plea and evidence is insignificant, in view of the inconsistent evidence brought on record by Pws. 1 and 2 regarding the management of the temple. On this ground, the plaintiffs cannot be declared as Managers of the trustee or Managers of the temple. Accordingly, this question is answered against the plaintiffs/appellants.

16. **In Re(e)** : One of the major contentions of the defendant is that in view of Exs. B.3 to B.8, the land revenue receipts evidencing the payment of land revenue to the Government and basing on those

documents, he claimed that he is the manager of the temple. Those documents would, at best, establish that land revenue was being paid to the revenue department for the property own and possessed by the temple. Those documents would not create any right or title or interest in immovable property since the revenue department issued such receipts on collection of land revenue for fiscal purpose. Those documents would not confer any title on the defendant or on the plaintiffs. Even otherwise, it is for the plaintiffs to establish their independent case by producing satisfactory evidence to enable the Court to exercise discretion in favour of plaintiffs for grant of declaratory relief. On the other hand, the plaintiffs mostly relied on the certified copies of depositions in L.A.O.P.No.309 of 1990. They are only piece of evidence and it is not known that those witnesses were alive or not as on the date of production and marking of those documents Exs. A.4 to A.10, certified copies of depositions of Pws. 1 to 7 in O.P.No.309 of 1990. They cannot form the basis for grant of decree declaring that the plaintiff in O.S.No.2585 are the managers of the temple. Such previous statements can be admitted in evidence only confronting to the witnesses, who deposed before the Court in O.P.No.309 of 1990 if they are not available to the process of the Court or not alive to attract Section 32(2) of Hindu Evidence Act, they cannot be marked. Therefore, in the absence of any evidence that the witnesses—PWs. 1 to 7 in O.P.No.309 of 1990 are not available to the process of the Court or that they are not alive, the Court cannot base such previous statement of the witnesses examined in the other proceedings to grant a decree declaring that the plaintiff in O.S.No.2585 of 2004 are in management of the temple.

17. However, the defendant—Rangu Papachari claimed declaratory relief based on Exs. B.3 to 8, land revenue receipts, at best, establish that he is paying land revenue to the revenue department. Unless he is in the management of the temple, the question of payment of land

revenue by him and obtaining those receipts, producing the same before the Court does not arise. Ex.B.2 is the Certified Copy of Adangal for the fasli 1110 and it is also piece of evidence to establish that the plaintiff is in management of the temple and its property. All these documents cumulatively establish that the plaintiff in O.S.No. 2887/2004 is managing the temple. Therefore, the trial Court believed that the said Rangu Papachary is in management of the temple i.e., Srimadvirat Pothuluri Veera Brahmendra Swamy Temple as on the date of filing of the suit and the plaintiffs failed to establish their management in the temple and dismissed the suit in O.S.No.2585/2004 while decreeing the suit O.S.No.2887 of 2004 filed by Rangu Papachary declaring that he is the managing trustee of the Srimadvirat Pothuluri Veerabrahmendra Swamyvari Devasthanam, Nunna Village and also granting permanent injunction restraining the plaintiffs and their men from interfering with the management of Srimadvirat Pothuluri Veerabrahmendra Swamyvari Devasthanam, Nunna.

18. The fact findings recorded by the trial Court were confirmed by the Appellate Court in A.S.No.147 and 148 of 2009. Even after appreciation of entire legal contentions urged before this Court by the learned counsel for second appellant, I find no illegality in the decrees and judgment passed by the trial Court, which was confirmed by the appellate Court, recording concurrent findings and I find no irregularity or illegality in the findings of the trial Court, confirmed by the appellate Court, those fact findings do not call for interference of this Court since the scope of Second Appeal is limited for deciding the substantial question of law under Section 100 of CPC. Therefore, I find no ground to overturn the findings recorded by the trial and Appellate Court, while deciding the second appeal. Hence, the findings recorded by the Courts below are confirmed in this appeal.

19. In the result, these two Second Appeals are dismissed confirming the findings recorded in O.S.No.2585 of 2004 and 2587 of 2004 on the

file of III Additional Junior Civil Judge at Vijayawada.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 22-08-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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SA Nos.376 and 619 of 2012

Dt. 22-08-2016

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[\[1\]](#) AIR 1977 SC 1712

[\[2\]](#) AIR 1956 SC 593