

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.25 OF 2009

JUDGMENT:

The defendant in O.S. No.300 of 2004 and appellant in A.S. No.179 of 2006, who is unsuccessful throughout, preferred this second appeal, to set aside concurrent findings of trial court and set aside the decree.

02. Heard Sri Sai Gangadhar Chamarthy, learned counsel for the appellant and Sri Narasimha Rao Gudiseva, learned counsel for the respondent at the stage of admission.

03. The appellant herein is the defendant and the respondent herein is the plaintiff in O.S. No.300 of 2004. They will hereinafter be referred to as arrayed before the trial court for convenience.

04. The plaintiff filed suit in O.S. No.300 of 2004 for grant of perpetual injunction restraining the defendant from interfering with her peaceful possession and enjoyment of the property alleging that her mother gifted the schedule property under the original of Ex.A.1 dated 26.11.2004. Since then she has been in possession and enjoyment of the property without any interruption paying property tax to the concerned department. While continuing in possession of the property, the defendant, who is the alleged purchaser of the property under the agreement of sale, made an attempt to interfere with her possession and enjoyment of the property. Therefore, she claimed perpetual injunction, restraining the defendant from interfering with her possession and enjoyment of the property.

05. The defendant filed written statement contending that he purchased the property under the agreement of sale dated 27.01.1993 for Rs.3,40,000/- while agreeing to pay advance of Rs.50,000/-, also paid Rs.50,000/- as part payment in the month of February, 1993 to the mother of the plaintiff-Tata Hanumayamma, but she postponed the execution of regular registered sale deed. On 03.03.1993 the defendant paid further sum of Rs.45,000/- by

way of pay order drawn on State Bank of Hyderabad, Gudivada, and offered to pay balance of sale consideration in the month of July 1993. But Hanumayamma, mother of the plaintiff, did not execute the registered sale deed receiving balance of sale consideration on one pretext or the other. It is specifically contended that he spent huge amount for repairs of the building and that he never made an attempt to interfere with the possession of the property and prayed for dismissal of the suit.

06. Basing on the above pleadings, the trial court framed only one substantial issue, i.e., whether the plaintiff is entitled for permanent injunction as prayed for?

07. During trial, the plaintiff herself was examined as P.W.1 and marked Exs.A.1 to A.5 on her behalf and the defendant himself was examined as D.W.1, but no document was marked on his behalf.

08. Upon hearing argument of both the learned counsel, the trial court decreed the suit restraining the defendant from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff.

09. Aggrieved by the decree and judgment of the trial court, the defendant preferred an appeal before the District Judge, Krishna, Machilipatnam, on various grounds. The appeal was dismissed confirming the judgment of the trial court.

10. The defendant, being unsuccessful before the trial court and the first appellate court, preferred the second appeal under Section 100 of the Code of Civil Procedure, 1908 ('CPC' in short) raising several contentions and formulated three substantial questions of law, mainly relating to the letting secondary evidence without leave of the court and findings of the trial court are not based on any evidence on record.

11. The plaintiff claimed permanent injunction on the strength of original of Ex.A.1 executed by her mother- Hanumayamma, in her

favour and the same was accepted. Since the date of execution of original of Ex.A.1, she has been in possession and enjoyment of the property, whereas Hanumayamma became owner of the property by virtue of Ex.A.2. Therefore there is no dispute regarding title of Hanumayamma. As the defendant himself claiming right through agreement of sale, the trial court and first appellate court recorded a finding that the plaintiff is in possession and enjoyment of the property in pursuance of the gift deed and there is categorical admission in the evidence of D.W.1 regarding the possession of the plaintiff as on the date of filing the suit. Though the defendant claiming that he is in possession and enjoyment of the property in pursuance of the agreement of sale, it has not seen the light of the day, but contended that he filed the suit for specific performance to enforce the agreement of sale executed by Hanumayamma. It is not his case that the agreement of sale is possessory agreement and no piece of evidence is brought on record to prove delivery of possession to the defendant, and, in fact, he never claimed that he is in possession and enjoyment of the property, while admitting the plaintiff's possession over the property.

12. The main contention of the learned counsel for the defendant is that without leave of the court, the plaintiff is not entitled to adduce secondary evidence i.e., Photostat copy of gift deed marked as Ex.A.1.

13. No doubt Ex.A.1 is Photostat copy. It is a copy taken from the original by mechanical process but not certified as true copy by the court or competent authority, however, it is a copy taken by mechanical process. The document is only to prove the lawful possession of the plaintiff, not otherwise. When the defendant himself admitted the possession of the plaintiff, the documents- Exs.A.1 and 2 loses its importance, and mere permitting to adduce secondary evidence, without leave of the court itself is not a ground

to dismiss the suit for permanent injunction that too such plea was not raised either before the trial court or before the first appellate court. In any view of the matter, Exs.A.1 and A.2 are only relevant for limited purpose of proving the lawful possession. When the defendant admitted possession of the plaintiff, they become irrelevant to decide real controversy between the parties regarding the possession. Both the trial court and the first appellate court recorded the concurrent finding that the plaintiff is in possession and enjoyment of the property as on the date of filing the suit and on the strength of her possession, she is entitled to protect her possession.

14. One of the contentions of the defendant is that he purchased the property under agreement of sale, filed suit for specific performance to enforce the terms of agreement of sale. But no document is produced before this court in support of his contention, however, he is not claiming either possession or title over the property, since the suit for specific performance is pending, and such agreement for sale would not confer any title over the immovable property nor create any charge over the property under Section 54 of the Transfer of Property Act, 1882.

15. In a suit for bare injunction, the plaintiff is required to establish lawful possession over the property besides proof of attempt to infringe or invade legal rights of the plaintiff. When the plaintiff established her lawful possession on the date of filing the suit, she is entitled to protect her possession and that too in a suit for bare injunction, the court cannot go into complicated questions of title, the person not having title but being settled possession of property on the date of suit is entitled to injunction even against true owner as held by this Court in **ALLA SESHUKUMAR AND ANOTHER V. ALLA RADHA KRISHNA**^[1] and a similar view was expressed by this Court in **KANEEZ FATHIMA V. SAMRU SULTANA**^[2]. It is clear from the above judgments that unless a

plaintiff in a suit for perpetual injunction proves his title, possession even if established, cannot be recognized. This is totally opposed to the settled principles of law. Basically, the finding, as to the possession, must be recorded, in a suit of this nature, and the verification of title is only for limited purpose and the court shall not undertake exercise to decide title, in a suit for permanent injunction.

16. In **SURAMPUDI SUDARSANA RAO V. NANDURI VENKATA SEETHA RAMANJANEYULU**^[3] this court held that for grant of perpetual injunction, a finding has to be recorded as to lawful possession and interference with such possession by defendant and upheld the injunction granted by the first appellate court. In **ANATHULA SUDHAKAR V. P. BUCHI REDDY**^[4] the Apex Court laid down principles as to maintainability of suit for bare injunction, even according to it when the plaintiff proved lawful possession and attempted to invade or infringe his legal right of plaintiff a suit for bare injunction is maintainable. In view of the settled legal position laid by this Court and the Apex court, courts need not go into the title of the property and the Court shall not record finding regarding title except for limited purpose of deciding the lawful possession as on the date of filing the suit. Therefore, Exs.A.1 and A.2 are irrelevant for the purpose of deciding real controversy between the parties except to the extent of lawful possession. Hence, on this ground the suit cannot be dismissed, allowing the second appeal.

17. The other requirement to grant perpetual injunction is threat of interference with the lawful possession. Both the trial court and appellate court recorded concurrent finding that the plaintiff is in lawful possession on the date of filing the suit. The only requirement is, the plaintiff has to establish the threat of interference or invasion or infringement of right of the plaintiff or legal obligation. Here, there is sufficient evidence on record that the defendant made

an attempt to interfere with the lawful possession of the plaintiff and the defendant himself made an assertion that he incurred huge amount for attending repairs that itself suffice to conclude that the defendant in the suit making efforts to interfere with the possession and enjoyment of the plaintiff. If such threats are translated into action, it would certainly amount to infringement or invasion of legal right of the plaintiff to continue in possession of the plaintiff. Therefore, the trial court rightly decreed the suit granting permanent injunction in favour of the plaintiff and against the defendant.

18. One of the contentions raised by the defendant is that the plaintiff did not examine her mother. Examination of the donee under Ex.A.1 is unnecessary in a suit for perpetual injunction, since this court cannot go into the title of the parties in suit for bare injunction, at best it is useful to record a finding lawful possession of the plaintiff. When the defendant himself admitted the possession of the plaintiff over the suit schedule property, non-examination of the plaintiff's mother-donor under original of Ex.A.1 loses its importance. Hence, it is not a ground to reverse the concurrent finding of both the trial court and first appellate court.

19. Regarding admissibility of Ex.A.1, no objection was raised before the trial court or appellate court, for the first time questioned in the second appeal, moreover title is not in issue. Hence, admission of Ex.A.1 without leave of the court would not change the result in the suit. Therefore, it is not a ground to interfere with the findings of Courts below.

20. Hence, I find no substantial question of law to interfere with the concurrent finding recorded by the trial court in O.S. No.300 of 2004 and the first appellate court in A.S. No.179 of 2006.

21. Accordingly, the second appeal is dismissed at the stage of admission, but in the circumstances without costs.

22. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 19.07.2016
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[\[1\]](#) (2008) 1 ALT 430
[\[2\]](#) (2008) 3 ALT 538
[\[3\]](#) (2008) 6 ALT 676
[\[4\]](#) AIR 2008 SC 2033