

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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SECOND APPEAL No.785 of 2015
&
CIVIL REVISION PETITION No.5217 of 2015

BETWEEN

A. Raja Reddy.

... APPELLANT

AND

K.R. Subramanyam and another.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 07.01.2016

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | No |

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COMMON JUDGMENT:

SA.No.785 of 2015:

The second appeal is filed by the plaintiff, whose suit, O.S.No.181 of 1997 for permanent injunction, was dismissed by both the Courts below.

2. The plaint schedule in the suit O.S.No.181 of 1997 before the Principal Junior Civil Judge, Tirupati, is an extent of Ac.1.01 cents in Sy.No.241/5 of Tiruchanur village, Renigunta Sub-District, Chittoor District. The plaintiff claims title on the basis of Ex.A17, agreement of sale, alleged to have been executed in his favour by one Dorai and traces the title of his vendor and his vendor's vendors through Saswatha Patta dated 11.03.1941 stated to have been granted by

Shri Hathiramjee Mutt in favour of one Nagarthapeta Kodhanda Ramaiah, who sold away the said land in favour of Dorai under registered sale deed 12.07.1971. The said Dorai in turn sold the said land in favour of the plaintiff under agreement of sale dated 29.10.1973. The plaintiff also claims that he was granted ryotwari patta by the Inam Deputy Tahsildar under order dated 20.01.1985.

3. Per contra, the respondents/defendants in the suit deny the claim of the plaintiff, as set out above and claim that the land was originally owned by one Vengipuram Ananthacharyulu, who sold the property under registered sale deed dated 19.06.1950 to one Malla Krishna, who in turn sold the said property to B. Pullaiah under registered sale deed dated 21.11.1964 and after his demise, his son was granted ryotwari patta on 23.07.1977. Subsequently, the land was sold to one K. Suryanarayana Chowdary, who in turn sold an extent of Ac.0.85 cents to one Meenamma under registered sale deed dated 15.07.1981 and the remaining extent was sold to one Munikrishna Reddy and Balagangadhara Reddy, who, in turn, are stated to have sold the same

to the second defendant under registered sale deed dated 06.02.1984. While the respondents claim possession throughout, they also state that they filed O.S.No.251 of 1996 as third parties tried to interfere and in the said suit, learned Principal Subordinate Judge, Tirupati appointed an Advocate Commissioner to note the physical features.

4. Before the trial Court, P.Ws.1 to 3 and D.W.1 were examined and Exs.A1 to A27 were marked on behalf of plaintiff and Exs.B1 to B45 were marked on behalf of the defendants. The trial Court framed necessary issues and on due consideration of evidence, both oral and documentary, dismissed the suit under judgment and decree dated 29.09.2008. In appeal, A.S.No.35 of 2009, filed by the plaintiff, learned IV Additional District Judge, Tirupati considered the entire oral and documentary evidence afresh and keeping in view the findings of the trial Court, dismissed the appeal under judgment and decree dated 03.08.2015.

5. I have heard the learned counsel for the appellant on the substantial questions of law, as projected by him in this second appeal. I have also heard the learned counsel for the respondent/caveator.

6. From the judgments of both the Courts below, it is evident that the documents, referred to above, on the basis of which the present suit for injunction was filed by the appellant, were not accepted by both the Courts below. The finding as to title is clearly *prima facie* and incidental to the relief of permanent injunction sought for by the appellant and that is made clear by the lower appellate Court in its judgment. It is also evident from the findings of both the Courts below that the appellant failed to establish, incidentally, even the title,

as claimed by him, inasmuch the document Ex.A17, on which strong reliance is placed by the appellant, does not contain any survey number and door number. Further, reliance placed by the appellant on the Saswatha patta and the paimash No.8 also does not advance the case of the appellant, as

there is no document filed to correlate that they are with reference to the plaint schedule land. Apart from that, there is a serious allegation by the respondents of fabrication of documents by the appellant. Ex.A27 shows that there is a glaring discrepancy in the extent mentioned in Ex.A2 and Ex.A27 and no explanation is forthcoming from the appellant.

7. In addition to above, it is also a matter on record that a patta dated 26.07.1990 was granted in favour of the first defendant and that was questioned by the appellant by filing an appeal before the Revenue Divisional Officer (Rural), Tirupati. The entertainment of the said appeal was questioned by the defendant by filing WP.No.5932 of 2008 before this Court and the same was allowed by this Court by order dated 01.05.2015 and thereby, the patta granted in favour of the first defendant attained finality. Though the judgment of this Court in the above writ petition was not exhibited, as it is on 01.05.2015, a copy thereof was placed before this Court during the hearing and there is no controversy between the learned counsel on either side with regard to the said position. Keeping all these crucial issues in mind and the findings of the lower appellate Court, in particular, I do not see any substantial question of law arising for consideration in the second appeal.

The second appeal, therefore, fails and is accordingly dismissed.

CRP.No.5217 of 2015:

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8. This revision is also filed by the appellant in the above second appeal questioning the rejection of his application, I.A.No.179 of 2015, for production of additional evidence by order of the lower appellate Court dated 03.08.2015.

9. It is evident from the impugned order of the lower appellate Court itself that the said application I.A.No.179 of 2015 was heard and disposed of along

with A.S.No.35 of 2009 by a separate order.

10. The affidavit of the petitioner/plaintiff filed in support of the said application shows that the petitioner seeks to file as many as 8 new documents before the lower appellate Court as additional evidence.

The only reason mentioned in para 5 of the affidavit is that they are all revenue documents but stated to have been traced only recently.

11. The lower appellate Court while considering the said application, after duly considering the scope of Order 41 Rule 27 of the Civil Procedure Code and being not satisfied with the application, declined to permit the production of documents.

12. After hearing the learned counsel for the petitioner, I am unable to see any reason to interfere with the order of the lower appellate Court, as the petitioner/plaintiff has failed to make out any ground as enumerated under Order 41 Rule 27 CPC. Furthermore, the lower appellate Court also found that the said application for additional evidence is filed only on 22.06.2015 i.e. after six years of filing of the appeal with unexplained reasons, which clearly show lack of diligence on the part of the petitioner. Petitioner/plaintiff must establish due diligence to seek justification for production of additional evidence, particularly, after six years of pendency of the appeal.

More importantly, the additional documents sought to be produced, for the first time, if received in evidence, would eventually result in fresh pleadings and fresh trial, which is not warranted on the facts and circumstances of the case. I, therefore, do not find any reason to interfere with the impugned order.

The civil revision petition is accordingly dismissed.

In the result, the second appeal and the civil revision petition are dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

January 7, 2016
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VILAS V. AFZULPURKAR, J