

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.732 of 2015

JUDGMENT:

This second appeal is preferred challenging judgment and decree dated 02.09.2015 in A.S.No.1 of 2015 on the file of Senior Civil Judge, Zaheerabad, whereunder judgment and decree dated 31.10.2014 in O.S.No.14 of 2007 on the file of Junior Civil Judge, Zaheerabad, is confirmed.

2. Appellant herein is the unsuccessful plaintiff in both the Courts. Plaintiff filed O.S.No.14 of 2007 for perpetual injunction in respect of Ac.4.20 gts. of land in Sy.No.23/A2 situated at Hoti Vilage, Zaheerabad Mandal. Respondent herein resisted the claim of plaintiff in respect of Ac.2.00 of land out of plaint schedule property contending that he purchased the said Ac.2.00 of land through an agreement of sale dated 30.01.2005 and that the trial Court on a consideration of oral and documentary evidence produced on behalf of both parties held that plaintiff has not approached the Court with clean hands and as such not entitled for the discretionary relief of perpetual injunction and dismissed the suit. Aggrieved by the same, plaintiff preferred appeal and the appellate Court on a reappraisal of the oral and documentary evidence confirmed the findings of trial Court and dismissed the appeal. Now, aggrieved by the same, present second

appeal is filed contending that the following are the substantial questions of law.

1. Whether the Judgments of the courts below do suffer from perversity as the findings as to possession of the appellant over the suit land are not only against the weight of evidence but is altogether against the evidence itself?
2. Whether the entries in the certified copies of the Pahanies marked as Ex.A-1, Ex.A-2, Ex.A-3, Ex.A-6, Ex.A-7, Ex.A-8 and Ex.A-9 showing the appellant pattedar and possessor of the suit land do not prove the lawful possession of the appellant as on the date of the suit?
3. Whether the alleged certified copy of the pahani for the year 2005-2006 allegedly issued by the Deputy Mandal Revenue Officer, which is filed by the respondent and marked as Ex.B-3 is admissible in evidence?
4. Whether the alleged stray certified copy for the year 2005-2006 marked as Ex.B-3 dispel the continuity of possession of the appellant over the suit land which is evident from the certified copy of the pahanies marked as Ex.A-1, Ex.A-2, Ex.A-3, Ex.A-6, Ex.A-7, Ex.A-8 and Ex.A-9?
5. Whether the findings of the courts below that weight is to be given to the certified copy of the pahani for the year 2005-2006 marked as Ex.B-3 against the certified copy of the pahani for the year 2005-2006 marked as Ex.A-1 issued by the Panchayat Secretary is sustainable in law?
6. Whether the lower courts did commit error in law in placing reliance on the alleged agreement of sale dated 30-1-2005 and the alleged receipt dt.2-2-2005 in which admittedly there is no recital as to delivery of possession of the suit land by the appellant to the respondent, to disbelieved the possession of the appellant over the suit land even as on the date of filing of the suit?
7. Whether in the suit the perpetual injunction non mentioning of the details about the obtaining of hand loan of Rs.1,00,000/- from the respondent and

handing over the original pattedar pass book and title deed to the respondent amounts to suppression of the fact, dis-entitling the appellant from the relief of perpetual injunction?

8. Whether the Judgment and decree of the lower appellate court in which merely the contents of judgment of the trial court are depicted without independent appreciation of oral and documentary evidence is in accordance with order 41 rule 31 C.P.C. is liable to be set aside?

3. Heard arguments.

4. Advocate for appellant submitted that plaintiff herein disputed the alleged agreement of sale dated 30.01.2005 and respondent herein filed suit for specific performance on the basis of said agreement, which is pending as O.S.No.47 of 2010 on the file of Senior Civil Judge, Zaheerabad. He submitted that trial Court has given certain findings with regard to the same agreement, which is marked as Ex.B.4 and connected cash receipt dated 02.02.2005, which is marked as Ex.B.5 and as the specific performance suit is a comprehensive suit and if these findings are taken into consideration by that Court injustice would be caused to appellant herein. He further submitted that the Courts below have not properly appreciated the material documents produced on behalf of plaintiff which clearly established that plaintiff is in possession and enjoyment of the entire suit schedule property as on the date of the suit.

5. I have perused material papers. As seen from the record, respondent herein filed a receiver application in

the very same suit and a court receiver was appointed in respect of Ac.2.00 of land and that order was challenged by way of C.M.A. and the first appellate Court confirmed the appointment of court receiver and that order was challenged by way of a revision before this Court and revision was also dismissed holding that defendant is in possession of the property, which was at interlocutory stage. Thereafter trial Court and 1st appellate Court upheld the possession on the basis of oral and documentary evidence. So, when there concurrent finding of two Courts with regard to possession of defendant in respect to Ac.2.00 of land, at this stage in second appeal that aspect cannot be re-examined on the ground that Courts have not properly appreciated the material on record. All the grounds raised on behalf of appellant are in respect of factual aspects and no law is involved leave alone substantial question of law to admit second appeal. However, since appellant is apprehending that the trial Court where O.S.No.47 of 2010 is pending may be influenced by the findings in O.S.No.14 of 2007 in respect of Ex.B.4 and Ex.B.5, I feel by observing that the trial Court i.e., Senior Civil Judge, Zaheerabad, shall independently examine and decide agreement of sale (Ex.B.4) and cash receipt dated 02.02.2005 (Ex.B.5) without being influenced by any of the findings recorded in O.S.No.14 of 2007 and decide those documents in accordance with law would meet the

ends of justice.

6. With the above observation, second appeal is dismissed at admission stage.

7. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

3rd February 2016.

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