

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.538 of 2015

JUDGMENT:

Defendant Nos. 1 and 2 in O.S.No.276 of 2005 on the file of Senior Civil Judge, Gajuwaka, who are the Appellants in A.S.No.185 of 2010 on the file of XIII Additional District Judge, Visakhapatnam at Gajuwaka, have preferred this Second Appeal under Section 100 of Code of Civil Procedure ("CPC" for brevity) challenging the concurrent findings recorded by the Courts below to the extent of declaring that Ex.A.35 dt. 12.03.2004 is null and void while granting perpetual injunction in favour of respondent herein.

2. The Plaintiff filed the suit for grant of permanent injunction restraining defendant Nos. 1 and 2/appellants herein from interfering with his exclusive possession and enjoyment of the schedule property claiming lawful possession while alleging that the defendants were attempting to interfere with his possession. Whereas, the defendants filed Written Statement setting up a Partition, the partition deed was marked as Ex.A.35 dt. 12.03.2004 to establish that the suit schedule property is allotted to him and to claim exclusive right over the schedule property, while contending that they are in possession and enjoyment of the schedule property.

3. During hearing, Sri V.V.N.Narayana Rao, learned counsel for appellants/defendants, drawn the attention of this Court to a specific findings on Issue No.2 framed by the trial Court declaring that Ex.A.35 is null and void and requested to set aside the said finding as it would affect the rights of the parties in O.S. No.38 of 2006 on the file of XIII Additional District Judge, Gajuvaka, which is filed for recovery of possession.

4. Undisputedly, the suit filed before trial Court is for injunction simplicitor on the strength of lawful possession and threat to infringe or invade the legal rights of the plaintiff on the suit schedule property. The defendants also set up a Partition Deed marked as Ex.A.35 to claim

exclusive right over the schedule property. The trial Court framed Issue No.2, which is as follows:

“Whether the suit schedule property is ancestral property of the defendants and fell to the share of defendant No.2 during partition dt. 17.03.2004?”

5. In fact, the above issue would arise only when it is affirmed by one party and denied by the other party under Order 14 Rule 1 of CPC. But here, the defendants asserted their title under Ex.A.35—Partition Deed and the plaintiff did not deny the same by filing any rejoinder, of course, he denied the partition during the course of evidence. In such a case, the trial Court is not supposed to frame an issue regarding the legality and validity of the partition pleaded by the defendants. That apart, the scope of trial in a suit for bare injunction is limited and the Courts are not expected to record a finding as to the title attaching finality. But, the Court can go into title for limited purpose or incidentally to record a finding that the possession of the plaintiff is lawful or not. A similar question came up before this Court in **Alla Seshukumar and another v. Alla Radha Krishna**^[1], **Kaneez Fathima and another v. Samru Sultana and others**^[2] and **Surampudi Sudarsana Rao v. Nanduri Venkata Seetha Rmanjaneyulu and others**^[3]. In all three judgments, this Court consistently held that in a suit for injunction simplicitor, question of title not to be gone into and the person not having title but being in settled possession of the property on the date of suit is entitled to injunction even against the true owner. Basically, the finding as to the possession must be recorded in a suit for injunction and the verification of the title for limited purpose must be undertaken, if necessity arises. In view of the proposition of law declared by this Court in the above cited decisions, in a suit for bare injunction, the Court cannot record any finding except incidentally. But here, the defendants set up a Partition Deed marked as Ex.A.35 to claim their exclusive title over the property and though it was not denied by the plaintiff by filing a rejoinder in the suit, the said issue was framed by the trial Court and recorded a finding

thereon, which is beyond the scope of a suit for bare injunction.

Therefore, recording a finding by the trial Court, which was confirmed by the appellate Court, declaring that Ex.A.35 is null and void is liable to be set aside since the Courts below transgressed its limits in recording a finding in a suit for bare injunction and it is nothing but declaring a document as void without collecting any Court Fee and granting higher relief than claimed in the plaint and as such, the finding is unwarranted, in view of the limited scope of trial is a suit for injunction. Though the trial Court granted permanent injunction, the counsel for appellants/defendants did not make any request to reverse the said finding.

Sri K. Sarvabhuma Rao, learned counsel for respondent, fairly conceded that both trial Court and the Appellate Court ought not to have recorded such a finding as to the legality and validity of the Partition Deed, which is a subject matter of other suit in O.S.No.38 of 2006 pending on the file of XIII Additional District Judge, Gajuvaka, which is filed for recovery of possession based on the Partition Deed marked as Ex.A.35.

Therefore, the finding recorded on Issue No.2 by the trial Court, which is confirmed by the Appellate Court, that Ex.A.35 is null and void is hereby set aside since the Courts below exceeded its jurisdiction while dealing the suit for bare injunction and the Court, where the suit in O.S.No.38 of 2006 pending, is directed to decide the issue independently uninfluenced by any of the findings recorded by both trial Court in O.S. No.276 of 2005 on the file of Senior Civil Judge, Gajuvaka, Appellate Court and this Court.

With the above direction, this Second Appeal is disposed of to the extent of setting aside the impugned finding on Issue No.2 framed by the trial Court.

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

M. SATYANARAYANA MURTHY, J

Date: 04-08-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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[\[1\]](#) 2008 (1) 430

[\[2\]](#) 2008(3) ALT 538

[\[3\]](#) 2008 (6) ALT 676