HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.713 of 2016

JUDGMENT:

This Second Appeal under Section 100 of Code of Civil Procedure Code (for short 'CPC') is filed by the appellant/Plaintiff challenging the concurrent findings recorded by XI Junior Civil Judge, City Civil Court, Secunderabad in O.S.No.339 of 2007 and I Addl. Chief Judge, City Civil Court, Secunderabad in A.S.No.29 of 2013 dismissing the suit filed by the plaintiff for bare injunction.

2. For convenience of reference, the parties to the appeal will herein be referred, as ranked in O.S.No.339 of 2007 by XI Principal Junior Civil Judge, City Civil Court, Secunderabad, through out the judgment.

3(a). The Plaintiff filed the suit for grant of perpetual injunction restraining the defendants/respondents herein alleging that the plaintiff is the owner of the house bearing No.3-7-307 admeasuring 167.21 sq.yds at Kakaguda, Secunderabad, Cantonment area covered by registered Gift/ Settlement Deed dt. 6.3.1993 executed by her father U. Shanker. Since the date of gift, she has been in possession and enjoyment of the schedule property.

(b) She further contended that as there was a mistake in the extent, a rectification deed was also executed by the

Donar, vide Document No.3042/93, Dt. 24.11.1993, specifying the exact extent on ground.

© The defendants are the adjacent owners of the schedule property, taking advantage that the suit schedule property is the open land tried to interfere with the possession and enjoyment of the plaintiff over the schedule property. Thereupon, the plaintiff gave complaint to Karkhana Police Station complaining about the attempt made by the defendants to interfere with his possession and enjoyment over the suit schedule property, but no useful purpose was served as they continued their efforts to interfere with his possession and enjoyment of the schedule property. Hence, she sought for perpetual injunction against the defendants, as stated above.

4) Defendant Nos. 1 and 2 filed Written Statement resisting the claim on various grounds while denying the material allegations made in the complaint, *inter alia* contending that the plaintiff executed General Power of Attorney, vide Document No.705/IV/93, dt. 16.6.1993, in favour of her husband—Sri Kesav Chander for sale of schedule property and in turn, the said Kesav Chander sold the schedule property to Surampalli Srinivas under registered Sale Deed, bearing Document No.1376/94, dt. 13.5.1994. When V. Pentaiah made an attempt to interfere

with the possession of Srinivas, he filed Suit in O.S.No.277/1997 on the file of I Junior Civil Judge, City Civil Court, Secunderabad, and obtained an interim injunction in I.A.No.1897 of 1996, pending the suit. Thereafter, V. Pentaiah filed Suit in O.S.No.1144 of 1996 seeking cancellation of Gift Deed executed by the father of the plaintiff in favour of plaintiff. In the joint trial of both suits, the suit in O.S.No.1144 of 1996 was dismissed. Later due to intervention of elders for an amicable settlement, defendant No.2 purchased the suit schedule property from S. Srinivas under registered Sale Deed dt. 14.2.2007. Thus, defendant No.2 is in possession and enjoyment of the schedule property as absolute owner and therefore, the contention of the plaintiff that the defendants are trying to dispossess the plaintiff is not correct and hence, the plaintiff is not entitled to claim perpetual injunction restraining the defendants from interfering with the possession and enjoyment of the schedule property.

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

1) Whether the plaintiff is entitled for the relief of perpetual injunction as prayed for ?

2) To what relief ?

6. During trial, on behalf of Plaintiff, PW.1 was examined and Exs. A.1 to 4 were marked and on behalf of defendants, Dw.1 was examined and Exs. B.1 to 23 were marked.

7. Upon hearing argument of both counsel, the trial Court disbelieved the possession of the plaintiff over the suit schedule property, so also, attempt to interfere with the possession and enjoyment of the plaintiff by the defendants, dismissed the suit.

8. Aggrieved by the decree and judgment of the trial Court, the unsuccessful plaintiff, preferred an appeal before I Additional Chief Judge, City Civil Court, Secunderabad, in A.S.No.29 of 2013 and the said Court by its decree and Judgment dt. 29.02.2016 confirmed the decree and judgment passed by the trial Court, while dismissing the appeal. Thus, both the Courts below disbelieved the plea of the plaintiff and recorded a finding about lawful possession of the defendants over the suit schedule property as on the date of filing of the suit.

9. Aggrieved by the concurrent findings of both Courts, the present Second Appeal is preferred raising several contentions regarding non-consideration of evidence for proof of lawful possession of the plaintiff by the trial Court and the Appellate Court and her title to the property. When the defendants claiming possession through the husband of

the plaintiff and failed to prove their lawful possession as on the date of filing of the suit over the suit schedule property, the plaintiff is entitled to claim perpetual injunction based on her title to the property as admittedly the Gift Deed executed by her father in her favour, but the trial Court did not consider the evidence in proper perspective and committed an error in dismissing the suit.

10. Sri Ch. Dhanamjaya, learned counsel for appellant, formulated four substantial question of law regarding delivery of link document and non consideration of extraneous material without any pleading by the trial Court and Appellate Court and non production of any tax receipts is sufficient to consider that the plaintiff is out of possession etc. But, none of the grounds are substantial questions of law since they are pure questions of facts.

11. In any view of the matter before this Court, the learned counsel for appellant/plaintiff contended that production of Exs. A.1 to A.4 are sufficient to prove lawful possession of the plaintiff as on the date of filing of the suit. It is also contended that the signature of the defendant No.1 are not tallying with the admitted signatures of the defendant in the deposition of DW.1 and in the petition filed under Section 45 of Indian Evidence Act, the trial Court while postponing the examination of the document by

exercising power under Section 73 of the Indian Evidence Act, refused to refer the document to an expert, but no such exercise was undertaken under Section 73 of the Indian Evidence at the end of trial and thereby committed an error in dismissing the suit.

12. No doubt, the suit is filed for perpetual injunction where this Court has to record a finding whether the plaintiff is in lawful possession and enjoyment of the schedule property as on the date of filing of suit and if so, whether the defendants tried or made an attempt to interfere with the possession and enjoyment of the schedule property. In the present case, the basis for claim of the plaintiff is Exs. A.1 and A.2 ,the Gift Deed and Rectification Deed respectively, which would establish that the schedule property was gifted to plaintiff by her father and there is a recital regarding delivery of possession. But, in view of the execution of Ex.A.2, the delivery of possession in the original document appears to be inconsistent with the extent. Ex.A.1 was executed on 6.03.1993 and Ex.A.2 dt. 24.11.1993. But, the suit was filed in 2007. At best, these documents would establish that father of the plaintiff donated the schedule property to the plaintiff by executing a Gift Deed and delivered possession of the property, in terms of Ex.A.2—Rectification Deed. But, in the initial document i.e., Gift Deed, the

extent of property was shown as 390 sq.yds, evidencing delivery of the property. The recitals shows that the possession of the property was delivered but in the later Rectification Deed, there is no recital regarding delivery of extent i.e., 167.21 sq.yds. However, the extent of 390 sq. yards was delivered, the question of reducing the same to 167.21 in the rectification deed is totally inconsistent with regard to delivery of the possession of the property, by virtue of Ex.A.1. In any view of the matter, there is a passage of 14 years after Gift Deed and Rectification Deed and she would have paid property tax to the Municipality and if it is a vacant site, the plaintiff would have paid vacant land assessment or non agricultural assessment to the concerned authorities. Except Gift Deed, no iota of evidence is brought on record to establish that the plaintiff is in possession and enjoyment of the property. On the other hand, the defendants are claiming to be the purchasers of the schedule property through the husband of the plaintiff under Ex.B.1. In addition to execution of Ex. B.3—registered G.P.A, they produced voluminous documentary evidence evidencing payment of property tax and mutation proceedings issued by the Municipal Corporation.

13. In a suit for bare injunction, the plaintiff has to fall or stand on his own legs and cannot take advantage the weakness of the defendants. Therefore, it is obligatory on the part of the plaintiff to establish that she is in lawful possession and enjoyment of the property as on the date of filing of the suit and the defendants made an attempt to interfere with his possession and enjoyment to infringe or invade his rights over the schedule property. Here, the plaintiff failed to establish her lawful possession and enjoyment over the property as on the date of filing of the suit and thereby the trial Court declined to grant perpetual injunction in favour of the plaintiff.

14. Learned Counsel for Plaintiff/appellant would contend that production of Ex.A.1 and A.2 are sufficient to establish her possession. But, the rival claim of the defendants is that they purchased the property from the husband of the plaintiff and since then they are in possession and enjoyment of the property. Mere production of Sale Deed by the plaintiff is not sufficient to prove her possession as on the date of filing of the suit since Exs. A.1 and A.2 are almost 30 years prior to filing of the suit and thereafter, no document is produced to establish that she is in continuous possession and enjoyment over the suit schedule property. Even otherwise, this Court cannot undertake the exercise of investigation into the title to the property as this Court is

not required to record a finding regarding title or ownership of the property since it is a suit for injunction simplicitor.

15. The law is well settled in catena of decisions of this Court that to claim perpectual injunction restraining defendants from interfering with plaintiff's peaceful possession and enjoyment of schedule property i.e., immovable property, the title of plaintiff or defendants cannot be looked into except for limited purpose of finding lawful possession, as held in the judgment reported in 2008 (1) 430 (Alla Seshukumar and another Vs. Alla Radha Krishna), this Court held as follows:

> **"In a suit for injunction simplicitor, complicated questions of title not to be gone into. The person not having title but being in settled possession of property on the date of suit, is entitled to injunction even against true owner ".**

16. In another decision reported in 2008 (3) ALT 538 (Kaneez Fathima and another Vs. Samru Sultana and others), this Court held as follows:

> **"The court was under impression 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, on the limited sense, must be undertaken, if necessity arises."**

17. Similar view is expressed in the judgment reported in 2008(6) ALT 676 (Surampudi Sudarsana Rao Vs. Nanduri Venkata Seetha Ramanjanaeyulu and others), wherein this Court held as follows:

"For grant of perpetual injunction, the finding has to be recorded as to possession and upheld injunction granted by the first appellate court."

In view of settled legal position laid down by this Court in the decisions referred supra, this court need not go into title of parties and not competent to record any finding regarding title to the property, except for limited purpose of deciding lawful possession as on the date of filing suit.

18. Even otherwise, in the recent judgment reported in AIR 2008 S.C. page 2033 [Anathula Sudhakar Vs. P.Buchi Reddy (dead) by L.Rs. and others], the Apex Court laid down certain guidelines to maintain a suit for bare injunction, held in para 11 as follows:

> *"11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly:*
> *11.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simplicitor will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.*
> *11.2. Where the title of the plaintiff is not disputed, but he is in not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simplicitor, without claiming the relief of possession.*
> *11.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."*

19. In view of guideline No.11.1 of Hon'ble Apex Court, when plaintiff had no title to property and claiming prohibitory order of injunction basing on possession, he has to seek relief of declaration and suit for bare injunction is not maintainable. Therefore, on this ground also, the suit is not maintainable. However, it is clear from the concurrent findings of both Courts below, the plaintiff miserably failed to establish her lawful possession and enjoyment of the property as on the date of filing suit and hence, dismissed the suit and appeal. Therefore, I find no illegality in the Judgment passed by the trial Court, which was confirmed by the appellate Court, warranting interference of this Court while exercising power under Section 100 of CPC, which is limited to substantial question/s of law. As I find no substantial question of law and substantial questions of law formulated by the appellant are purely questions of fact and not the substantial questions of law. Therefore, this Second Appeal is dismissed at the stage of admission. However, liberty is given to the appellant to follow the guidelines laid down in *Anathula Sudhakar's* case, referred to supra, to take appropriate action in appropriate Court.

20. In the result, this Second Appeal is dismissed confirming the decree and judgment in O.S.No.339 of 2007 on the file of XI Junior Civil Judge, City Civil Court,

Secunderabad. But, without costs in the circumstances of the case.

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

M. SATYANARAYANA MURTHY, J

Date: 12-09-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SA No. 713 of 2016

Dt. 12-09-2016

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