

HON'BLE SRI JUSTICE S. RAVI KUMAR

SECOND APPEAL No.873 of 2015

JUDGMENT:

This second appeal is preferred challenging the concurrent findings of Courts below in A.S.No.53 of 2013 dated 29.11.2014 on the file of VIII Additional District and Sessions Judge at Medak and judgment and decree dated 18.11.2013 in O.S.No.37 of 2008 on the file of Junior Civil Judge, Andole at Jogipet.

2. Appellant herein is unsuccessful plaintiff in both the Courts. Plaintiff filed O.S.No.37 of 2008 for the relief of perpetual injunction in respect of Ac.1.18 gts. of land in Sy.No.292/52 of Uthloor Village of Shankarampet (A) Mandal, Medak District, within specified boundaries. Trial Court on a consideration of oral and documentary evidence of both parties held that plaintiff failed to establish his possession over the suit schedule property within given boundaries and as such he is not entitled for the relief of permanent injunction. Aggrieved by the same, plaintiff preferred appeal to the District Court and VIII Additional District and Sessions Judge, Medak, on a reappraisal of oral and documentary evidence, dismissed the appeal confirming the findings of trial Court. Now, aggrieved by the concurrent findings of trial Court and appellate Court, present second appeal is filed.

3. Heard learned counsel for appellant.

4. According to learned counsel for appellant, the following are the substantial questions of law that require a decision of this Court in second appeal.

1. Whether the evidence of PW.1 and PW.2 and the documents Ex.A.1 to Ex.A.7 does establish ownership and possession of the appellant over the suit land survey No.292/52 extent Ac.1.18 guntas situated at Village Uthloor Revenue Mandal Shankarampet-A District Medak as per plaint schedule?
2. Whether any reliance can be placed on the alleged sketch map filed by the respondents marked as Ex.B.1 which is not authentic Revenue Map about the boundaries and identity of the suit land?
3. Whether are there any material admissions in the evidence of PW.1, the appellant herein about the location and identity of the suit land especially with reference to the alleged Uthloor Shankarampet-A Road?
4. Whether the Judgments of the courts below are perverse and un-sustainable in law?
5. Whether the finding of the trial court that the appellant cannot rely on the admissions of the DW.1 to DW.3 in respect of ownership and possession of the appellant over the suit land is legally covers?
6. Whether mere non-mention of existence of Uthloor Shankarampet Road in the suit land as described in the plaint schedule, would alter or change the boundaries of the suit land particularly when there is no dispute about the area of the suit land survey No.292/52 owned and possessed by the appellant?
7. Whether the land existing in between Uthloor Shankarampet Road and vague is part and parcel of the suit land of the appellant and whether any Gangamatha Temple excess therein as claimed by the respondents?
8. Whether the dismissal of the petition I.A.No.301 of 2014 by the lower appellate court which is filed by the appellant to appoint commissioner to fix up the boundary of the suit land is legal and in accordance

with law and the appellant got right to challenge the same under Order 43 Rule 1-A C.P.C.?

5. Learned counsel for appellant submitted that when appellant filed application in I.A.No.301 of 2014 before the appellate court for appointment of Commissioner to localize the land, appellate Court without giving any finding dismissed that application and that appellant has a right to invoke Order XLIII C.P.C. to prefer second appeal against that order also and it is a substantial question of law to be decided by this Court. He further submitted that trial Court failed to consider the admissions of DWs.1 and 2 and it only gave weightage to Ex.B.1 which is not an authenticated document and giving such importance to Ex.B.1 is not permissible under law and that is the other substantial question of law involved in this second appeal. In support of his arguments, he placed reliance on the judgment of Allahabad High Court in **Gajraj and others v. Ramadhar and others**^[1] and a decision of Hon'ble Supreme Court in **P. Chandrasekharan and ors.**^[2] **V. S.Kanakarajan and ors.**^[2].

6. I have perused the material papers including the judgments of trial Court and first appellate Court. As seen from the material, it is specific case of plaintiff that he got Ac.1.18 gts. of land within specified boundaries. Defendants disputed the boundaries and contended that this Ac.1.18 gts. of land is not within those four boundaries as pleaded by plaintiff and according to defendants

Ac.1.18 gts. of land is within four boundaries that are mentioned by them in their written statement. When such a specific contention is raised on behalf of defendants, the burden is on plaintiff to show that Ac.1.18 gts. of land as claimed by him is within four boundaries as shown in the suit schedule. Trial Court on a consideration of the material on record held that plaintiff has miserably failed in establishing that he is in possession of the property within given boundaries. When defendants have raised specific plea disputing the boundaries, plaintiff has not taken any steps during trial of the suit for identification or localization of the land as per the boundaries given in the suit schedule. Having not satisfied with the findings of trial Court, plaintiff preferred appeal to the District Court and in the appeal, he filed I.A.No.30 of 2014 for appointment of Commissioner to make a local inspection and demarcate the suit schedule property. The learned appellate Judge while confirming the findings of the trial Court observed that an Advocate Commissioner cannot be appointed at the stage of appeal to fix the boundaries of suit schedule lands and on that ground held that there are no merits in I.A.No.301 of 2014 and the same was dismissed while dismissing the appeal.

7. Now according to learned counsel for appellant Order XLIII C.P.C. gives a right to appellant to challenge that interlocutory order in the second appeal. Order XLIII of C.P.C. only deals with appeals from orders and any

order passed in interlocutory application is appellable under this order provided those orders fall within grounds referred in Order XLIII Rule 1 Clauses (a) to (w). Once of the grounds raised in the second appeal is that Order XLIII Rule 1 C.P.C. gives a right to appellant to challenge the order in I.A.No.301 of 2014 in this second appeal. To support his submission, learned counsel placed reliance on Allahabad High Court Judgment cited supra. I have perused the decision relied on by appellant's counsel and that decision is in respect of power of the first appellate Court to remand the matter where it finds demarcation of boundaries is necessary. Therefore, that decision is no way helpful to the appellant. Further, Order XLIII C.P.C. is only in respect of preferring appeals against orders passed in the miscellaneous application and it is not in respect of preferring second appeal against interlocutory orders. Therefore, the contention of the advocate for appellant with regard to application of provisions of Order XLIII C.P.C. cannot be sustained.

8. Other contention of appellant is that the trial Court mainly relied on Ex.B.1 and it is not an authenticated document and it is only a rough sketch filed by the defendants. He submitted that interpretation of a document which goes to the root of the title of a party would be a question of law and can be ground in a second appeal. To support his arguments he relied on a decision of the Hon'ble Supreme Court referred to above (P.Chandrasekharan's case). He has drawn my attention

to paras 13 and 19 of the said judgment. In that case, the Hon'ble Supreme Court held that interpretation of a document which goes to the root of the title of the parties to the lis would undisputedly give rise to the question of law and it is also held in that decision that if the Courts misread and misinterpreted a document of title it would amount to a substantial question of law. Here, Ex.B.1 is not a document of title, it is only a plan for location and identity of the property. As seen from the material, trial Court has not completely relied on this Ex.B.1 it only referred to that document while holding that plaintiff failed to show that Ac.1.18 gts. in Sy.No.292/52 is within four boundaries that are pleaded in that plaint. So, when the document Ex.B.1 is not in respect of title, the decision relied on by appellant's counsel has no application.

9. As seen from the material with reference to grounds raised in the second appeal, all the grounds are in respect of appreciation of evidence both oral and documentary by the trial Court and appellate Court on factual aspects and no question of law is involved, much less a substantial question of law to be determined by this Court by exercising the power under Section 100 of C.P.C. For these reasons,

I am of the considered view that the second appeal is devoid of merits and that there are no grounds to admit.

10. Therefore, this second appeal is dismissed at admission stage.

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

S. RAVI KUMAR, J

25th January 2016.

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[\[1\]](#) AIR 1975 ALLAHABAD 406

[\[2\]](#) AIR 2007 SC 2306 (1)