

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

SECOND APPEAL No.1051 OF 2016

JUDGMENT :

This Second Appeal is filed challenging the judgment and decree dt.19.10.2016 in AS.No.148 of 2012 of Principal District Judge, West Godavari at Eluru confirming the judgment and decree dt.30.07.2012 in O.S.No.760 of 2009 of Principal Junior Civil Judge, Eluru.

2. The appellant herein is the plaintiff in the above suit. She filed the said suit seeking perpetual injunction against the respondents from interfering with her alleged peaceful possession and enjoyment of the plaint schedule property, which is an extent of 148 sq. yards house site with asbestos roof shed bearing door No.3-44 within specified boundaries.

3. The husband of the plaintiff is one Yesuratnam. He had a brother by name Premanandam. The 1st respondent/1st defendant is wife of Premanandam.

4. The appellant contended that the plaint schedule property was assigned to Premanandam under a D-Form patta Ex.A1 dt.18.01.1982, that Premanandam executed Ex.A2 Will dt.24.08.1990 in favour of Yesuratnam, and that Yesuratnam executed a registered settlement deed Ex.A4

dt.19.10.2004 in favour of the appellant. The appellant also pleaded that Premanandam died on 16.11.1990.

5. The 1st respondent filed written statement stating that she is the wife of Premanandam, that Premanandam died on 25.11.1988 and not on 16.11.1990 and that the Will Ex.A2 set up by the appellant is a fabricated one. She contended that this was done to grab the plaint schedule property, which had been assigned to her husband by the Government of Andhra Pradesh. She denied that there was any structure in the plaint schedule property.

6. By judgment and decree dt.30.07.2012, the trial Court dismissed the suit. It held that the 1st respondent produced Ex.B1 Certificate issued by the Panchayat Secretary, Duggirala Panchayat stating that Premanandam died on 25.11.1988. In spite of filing Ex.B1 through DW1, no suggestion was given to DW1 by the counsel for appellant denying the date of death of Premanandam as mentioned in Ex.B1. It therefore held that the date of death of Premanandam can only be 25.11.1988 and he could not have executed any Will, such as Ex.A2, on 16.11.1990 almost two years after his death. It held that no attestor was examined by the appellant to prove the said Ex.A1. It held that Ex.A5 certificate dt.05.12.2009 filed by the appellant, which had

been issued by the Panchayat Secretary, Duggirala Panchayat, cannot be accepted since no body was examined by the appellant in support of the said certificate and there was no door number, extent, R.S.No. and boundaries mentioned therein. It observed that Ex.A6 approved plan filed by the plaintiff relates to a building, where as even according to the appellant, the structure in the plaint schedule property is an asbestos roofed shed. It held that the appellant failed to establish her possession over the plaint schedule property and is therefore not entitled to the relief of perpetual injunction.

7. Challenging the same, appellant filed A.S.No.148 of 2012 before the Principal District Judge, West Godavari at Eluru.

8. The said appeal was also dismissed by the lower appellate Court. It held that the land was admittedly assigned in 1982 to Premanandam under Ex.A1; that Ex.A5 certified mentioned a tin roofed shed, but the appellant pleaded that it is an asbestos roofed shed; that Exs.A7 to A9, 17 to 23 filed by the appellant do not refer to any details of the property, and therefore the said documents cannot be accepted as referred to plaint schedule property. It noted that as per Ex.A1, the plot which was assigned to

Premanandam, had boundaries different from those mentioned in the plaint schedule and in the settlement deed Ex.A3 and therefore it held that the appellant's documents do not show possession of the appellant over the plaint schedule property.

9. Assailing the same, this Second Appeal is filed.

10. Counsel for the appellant contended that the Courts below should have believed Ex.A2 Will dt.24.08.1990.

11. Since no attester was examined to prove the execution of Ex.A2 Will dt.24.08.1990 and since the death of Premanandam was established to be on 25.11.1988 by the 1st respondent in the trial Court, which finding was not canvassed by the appellant before the lower appellate Court, there could not have been any Will executed by Premanandam on 24.08.1990 and the said Will has to be held as a fabricated one. For grant of relief of perpetual injunction, the appellant must approach the Court with clean hands. Since she produced a fabricated Will to base her claim for injunction, she cannot be granted any equitable relief, such as relief of injunction.

12. On appreciation of evidence, both the Courts below have concurrently held that the appellant failed to prove

possession of the plaint schedule property. Therefore, these findings cannot be said to be based on no evidence or perverse.

13. I do not find any merit in this Second Appeal and it is accordingly dismissed. There shall be no order as to costs.

14. Consequently, miscellaneous applications pending if any shall stand closed.

16th March, 2017
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M.S. RAMACHANDRA RAO, J

