

HON'BLE SMT JUSTICE ANIS

SECOND APPEAL No.1114 of 1998

JUDGMENT:

This appeal is filed by the appellants-defendants 1 & 2 in O.S.No.77 of 1984 under Section 100 C.P.C. against the judgment and decree dated 13.07.1998 in A.S.No.2 of 1988, passed by the Principal District Judge at Nalgonda.

2. The appellants 1 and 2 herein are the defendants 1 and 2 in O.S.No.77 of 1984 on the file of Subordinate Judge at Nalgonda, and the appellants 3 and 4 herein were brought on record as legal representatives of deceased appellant No.1 vide order dated 11.11.2009 in S.A.M.P.No.2222 of 2009. Respondents 1 to 5 herein are the plaintiffs in the aforesaid suit and respondents 6 & 7 herein are defendants 3 and 4 in the said suit. Respondents 8 and 9 herein were brought on record as the legal representatives of deceased respondent No.2 vide order dated 30.12.2008 in S.A.M.P.No.1061/2008, respondents 10 & 11 herein were brought on record as legal representatives of deceased respondent No.3 vide order dated 27.07.2016 in S.A.M.P.No.85 of 2014, and respondents 12 to 14 herein were brought on record as legal representatives of deceased respondent No.4 vide order dated 27.07.2016 in S.A.M.P.No.88 of 2014.

3. For the sake of convenience, the parties are referred to as arrayed in O.S.No.77 of 1984 before the Subordinate Judge, Nalgonda.

4. The brief averments made in the plaint are as under:

The plaintiff filed the aforesaid suit seeking declaration that he is the owner and possessor of the land admeasuring Ac.15.14 guntas in Survey No.67/AA and Ac.6.36 guntas in Survey No.70/AA situated at Gagillapuram Village, Deverkonda Taluk and also for grant of perpetual injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiff over the suit schedule property and also sought for a direction to rectify the records of rights of Gagillapuram village. According to the plaintiff, he is the owner and possessor of the above suit schedule property and originally the plaintiff and one Pallepally Seethaiah were shown as joint pattedars of Survey No.67 and Survey No.70 admeasuring Ac.15.14 guntas and Ac.20.27 guntas respectively and in the Khasra Pahani the plaintiff's name was shown as exclusive owner of the entire Survey No.67 and half of Ac.13.32 guntas of Survey No.70. From the date of preparation of Khasra pahani the plaintiff is in possession and enjoyment of the above two survey numbers and the grandfather of defendant No.4 by name

Konda Ramulu, S/o. Sayanna had no right or interest over the suit schedule property. Taking undue advantage of the fact that the name of plaintiff is identical with the name of defendant No.4's maternal grandfather, defendant No.4 colluded with the village Patwari and got entries in the mutation for the suit schedule property in his name. The revenue authorities without conducting any enquiry certified the mutation. Basing on the wrong mutation, necessary entries were carried out in the Faisal Patti during the Jamabandi of 1964-65. All these proceedings took place behind the back of plaintiff, which are fraudulent in nature. The plaintiff is the real pattedar of the Survey Nos.67 and 70 and the defendants 1 to 4 have no right or interest over the suit schedule property. On the strength of mutation proceedings, defendant No.4 and his associates tried to interfere with the peaceful possession of the plaintiff over the suit schedule property. The plaintiff filed the suit in O.S.No.189 of 1964 in the Court of District Munsiff, Deverkonda for declaration of his title and perpetual injunction and also for rectification of wrong entries in the Pahanies and the said suit was dismissed for default, as the plaintiff did not pursue the matter on account of his financial difficulties. According to the plaintiff, defendants 1 to 3 obtained the registered sale deeds from defendant No.4, who

had no right or title over the suit schedule property and after obtaining the sale deeds defendants 1 to 3 started interfering with the peaceful possession and enjoyment of the plaintiff over the suit schedule property and hence, the plaintiff filed O.S.No.77 of 1984 seeking the above relief against the defendants.

5. Before the trial Court, defendant No.4 remained *ex parte* and defendant No.1 filed the written statement and defendants 2 and 3 filed a memo adopting the written statement filed by defendant No.1. In the written statement, the defendants denied that the plaintiff and one P.Seethaiah were shown as joint pattedars of the suit lands in Khasra Pahani and also denied that the plaintiff was shown as the exclusive owner of Survey Nos.67/AA and 70/AA. According to the defendants, after the death of one Kondra Ramulu, S/o. Sayanna, defendant No.4 succeeded to the properties including the plaint schedule property and defendants 1 to 3 purchased the lands mentioned in the plaint schedule from defendant No.4 under the registered sale deeds. According to the defendants, the orders passed in O.S.No.189 of 1964 on the file of the District Munsiff Court, Deverkonda, will be barred as *res judicata* and the plaintiff is not entitled to bring the fresh suit against the defendants. Defendant No.4 is the real owner of the plaint schedule property and defendants 1

to 3 are the *bonafide* purchasers for value from defendant No.4. The plaintiff has no cause of action to file the suit and it is barred by limitation. The plaintiff has knowledge about the mutation proceedings and no steps have been taken for cancellation of the said mutation proceedings till today. According to the defendants, on 25.11.1983 defendant No.1 purchased Ac.9.14 guntas of land in Survey No.67/AA from defendant No.4 under a registered sale deed document, defendant No.2 purchased Ac.6.00 cents of land in the same survey number from defendant No.4 under a registered document, and defendant No.3 also purchased Ac.6.19 guntas of land in Survey No.70/AA from defendant No.4 under a registered document and that since the date of purchase defendants 1 to 3 are in possession and enjoyment of the suit schedule property and the plaintiff was never in possession of the suit schedule property as the owner and defendants 1 to 3 cultivated the suit lands and raised Castor crop in a portion of the suit lands and there is no cause of action for the plaintiff to file the suit and prayed the Court to dismiss the suit.

6. Basing on the pleadings, the trial Court framed seven issues. During pendency of the suit, plaintiff died and plaintiffs 2 to 5 were brought on record as the legal representatives of the deceased plaintiff.

7. To substantiate the claim plaintiff No.2 himself examined as PW1 and got examined another four witnesses as PW2 to PW5. On behalf of the defendants, DW1 to DW4 were examined. Exhibits A1 to A38 were marked on behalf of the plaintiffs and exhibits B1 to B9 were marked on behalf of the defendants.

8. After considering the oral and documentary evidence, the trial Court decreed the suit with costs. Aggrieved by the judgment of the trial Court, the defendants preferred an appeal in A.S.No.2 of 1988 on the file of the Principal District Judge at Nalgonda. On 13.07.1998, the first appellate Court allowed the said appeal in part and the judgment of the lower Court to the extent of giving declaration in respect of item No.1 of the schedule property is set aside as well as giving a decree for making the correction in the records of rights of Gogillapuram village, and the remaining portion of the lower Court decree in respect of the declaration of title for item No.2 and permanent injunction for both the items are confirmed.

9. Not satisfied with the judgment of the first appellate Court in A.S.No.2 of 1988 dated 13.07.1998, the defendants 1 and 2 preferred the present Second Appeal.

10. While admitting the Second Appeal, this Court framed the following substantial question of law:

“Whether the plaintiffs are entitled for grant of relief of injunction even though the relief of declaration of title and correction of record of rights is negated by the Court?”

11. Learned counsel for the appellants argued that both the Courts below erroneously granted injunction in favour of the plaintiffs even though the relief of declaration of title was negated by the first appellate Court. It is also argued that the plaintiffs have not challenged the finding of the first appellate Court about not granting the relief of declaration of title and therefore, the finding of the first appellate Court in that regard became final and further argued that the plaintiffs are not entitled for grant of injunction and prayed the Court to allow the Second Appeal.

12. On the other hand, learned counsel for the respondents-plaintiffs argued that there is no finding by both the Courts below about the ownership of appellants regarding the suit schedule property, but both the Courts below concurrently granted relief of injunction in favour of the plaintiffs and therefore, the appellants are not entitled to any relief in the Second Appeal and the concurrent findings of both the Courts below should not be interfered. Learned counsel relied upon the decision of the Supreme Court in **Narayanan Rajendran**

v. Lekshmy Sarojini¹, the relevant paragraphs of the said decision relied on by the counsel are given hereunder:

63. The analysis of cases decided by the Privy Council and this court prior to 1976 clearly indicated the scope of interference under Section 100 C.P.C. by this Court. Even prior to amendment, the consistent position has been that the courts should not interfere with the concurrent findings of facts.

64. Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is permitted to proceed with the case to decide those questions of law. The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:

- (i) The High Court would be justified in admitting the second appeal only when a substantial question of law is involved;
- (ii) The substantial question of law to precisely state such question;
- (iii) A duty has been cast on the High Court to formulate substantial question of law before hearing the appeal;
- (iv) Another part of the Section is that the appeal shall be heard only on that question.

Learned counsel for the respondents finally argued that the appellants have not proved the substantial question of law involved in this appeal and also not made out any case to interfere with the concurrent findings of both the Courts below and therefore, the Second Appeal is liable to be dismissed.

¹ 2010 (2) ALT2 (SC)

13. A perusal of the record shows that the deceased plaintiff No.1 filed the suit for declaration of title for the suit schedule property and for grant of permanent injunction and also sought for direction to rectify the revenue records. Plaintiff No.1 is claiming that he is the owner and possessor of dry land admeasuring Ac.15.14 guntas and Ac.6.36 guntas in Survey Nos.67/AA and 70/AA respectively situated at Gogillapuram Village, Deverkonda Taluq. After considering the oral and documentary evidence, the trial Court held that the deceased plaintiff No.1 is the owner and possessor of the suit schedule property and granted the relief of declaration and injunction in favour of the plaintiffs and also the relief of rectification of the revenue records.

14. The defendants filed the first appeal in A.S.No.2 of 1988 on the file of the Principal District Judge at Nalgonda. The first appellate Court, during the hearing of appeal, marked the additional documentary evidence of exhibits B10 to B23 on behalf of the defendants by recalling DW1. The first appellate Court after careful analysis of the oral and documentary evidence held that the plaintiffs are the owners of dry land covered in Survey No.67/88 admeasuring Ac.15.14 guntas and Ag.6.36 guntas in Survey No.70/AA situated at Gagillapuram Village, Deverkonda Taluq, but refused to grant declaration of title for item No.1 i.e., Survey

No.67/88 admeasuring Ac.15.14 guntas on the ground that the suit was barred by *res judicata* in respect of the above land and granted declaration of title to item No.2 and also granted permanent injunction for both the items. The first appellate Court refused to grant the relief in respect of the rectification of revenue records and contended that the plaintiffs have to move concerned authority for rectification/correction of the records. A perusal of the record shows that nowhere both the Courts below held that the defendants are the owner of Survey No.67/88 admeasuring Ac.15.14 guntas. It is no doubt true that after the judgment of first appellate Court in refusing the relief of declaration no appeal was preferred by the plaintiffs challenging the findings of the first appellate Court. Therefore, the findings of the first appellate Court for not granting declaration of title in favour of the plaintiffs became final. The appellants in the Second Appeal contended that the plaintiffs are not entitled for injunction when they are not the true owners. Admittedly, there is no finding to the effect that the appellants-defendants are the owners of item No.1 of the suit schedule property. On the other hand, both the Courts below gave a finding that the plaintiffs are the owners of both the properties, but failed to grant the relief of declaration on the ground that the suit was barred by *res judicata*, as the Survey No.67 is the subject

matter of the suit in O.S.No.189 of 1964, whereas the Survey No.70 was not the subject matter of the said suit. Thus, the first appellate Court granted injunction in favour of the plaintiffs basing on the evidence and admission of DW1 in the written statement. Though the learned counsel for appellants vehemently contended that defendant No.1 in the written statement has not admitted about the possession of the plaintiffs in the suit schedule property, on the other hand learned counsel for the respondents-plaintiffs pointed out in the written statement at paragraph No.9 wherein the defendant admitted that the plaintiffs and others cultivated the lands as tenants and their names were shown in Pahanies as cultivators.

15. Considering the oral and documentary evidence the appellants are not entitled for any interference by this Court and further, they failed to prove the substantial question of law involved in this Second Appeal. Further, the concurrent findings regarding the possession of plaintiffs for items 1 and 2 should not be interfered by this Court in the present Second Appeal. Therefore, the appellants have not made out any case to interfere with the concurrent findings of both the Courts below and therefore, the Second Appeal is liable to be dismissed.

In the result, this Second Appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending shall stand closed.

22.03.2017
MVA

ANIS, J

