

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

SECOND APPEAL Nos.418 & 474 of 2017

COMMON JUDGMENT:

Both these second appeals arise out of the concurrent judgments of eviction passed by both the Courts below directing the eviction of the son from the house owned by the father.

2. Heard Mr. Sivalenka Ramachandra Prasad, learned counsel for the appellant. Mr. Y. Ramatirtha, learned counsel takes notice for the respondent caveator.

3. The appellant is the son and the respondent is the father. For the sake of convenience, I shall refer to them by their biological relationship rather than the legal relationship of appellant and respondent.

4. The son filed a suit in O.S.No.188 of 2013 seeking a decree of permanent injunction restraining the father and the local police from forcibly evicting him from the suit schedule house. Later the father filed a suit in O.S.No.92 of 2015 for eviction. Both the suits were clubbed together as per the order dated 11.08.2015 passed in I.A.No.329 of 2015. The claim of the son in his suit for bare injunction was that he was working as development officer in L.I.C; that the plaint schedule house was constructed by his father with the income from the ancestral property and by alienating the properties of the mother; that the son worked in various places before he was transferred to Machilipatnam in May, 2005; that ever since his transfer to Machilipatnam he started residing along with his parents in the plaint schedule house; that the mother passed away on

20.10.2012; that after the death of the mother, the father wanted to marry again; that since the son opposed the proposal, his father wanted him to go out of the house and lodged a complaint with the Revenue Divisional Officer; that the Revenue Divisional Officer issued a notice and the son appeared before him through counsel; that at that stage one police constable came to the house and pressurised the son to go out of the house and that therefore he was seeking permanent injunction not to dispossess him otherwise than by due process of law..

5. The case of the father both in his own plaint and in the written statement filed in the suit of the son was that the site on which the plaint schedule house stands, was purchased by him under a registered sale deed dated 02.02.1978; that after obtaining a loan from L.I.C and after obtaining approval of the building plan from the municipality, he constructed a house on 23.02.1978 with the loan as well as his own earnings; that the mother became sick in the year 1997 due to paralytic stroke; that the father took care of the mother and the son left the parents uncared for; that in the year 2005, the son got transferred to Machilipatnam under the guise of helping his parents; that the father accepted to provide him an accommodation in the first floor of the house comprising of four rooms with a separate staircase where all amenities such as AC, electricity service, toilets etc., are provided; that after occupying the house, the son started causing maximum inconvenience to the parents demanding execution of a gift deed in his favour; that the son also abused the cook employed by the father and sent her away; that the

son did not also provide food to the parents, but asked them to fetch food from outside; that therefore the father started cooking food and also took care of his wife; that even when the mother was admitted in the hospital, the son did not care about it; that after the death of the mother the father is forced to take food from hotels; that the father is suffering from hyper tension, joint pains and prostate gland enlargement with frequent urinary trouble; that since there is no attached toilet in the ground floor, the father had to wake up at night and go out; that the father was prevented even from constructing an attached toilet in the ground floor; that on a complaint given by the father under the Maintenance and the Welfare of Parents and Senior Citizens Act, 2007, the Revenue Divisional Officer passed an order as against which the son filed a writ petition in W.P.No.8052 of 2015; that the property is a self acquired property of the father; that in the suit filed by the son for bare injunction, he secured an interim order of injunction, but the same was set aside by the 1st Appellate Court; that on a revision filed by the son, this Court recorded a written undertaking from the son that he will not cause any inconvenience to the father; and that despite the undertaking he continued to cause inconvenience forcing the father to seek eviction.

6. At the beginning the trial Court framed separate issues in both the suits, which read as follows:

Issues in O.S.No.188 of 2013:

1. Whether the plaintiff is entitled for permanent injunction as prayed for against defendants?
2. Whether the 2nd defendant is not a necessary party to the suit?
3. To what relief?

Issues in O.S.No.92 of 2015

1. Whether the plaintiff is entitled for decree of mandatory injunction as prayed for?
2. To what relief?

7. But after the suits were clubbed together, the Court below recast the issues and framed the following common issues:

1. Whether the plaintiff is entitled for relief of permanent injunction as prayed for in O.S.No.188 of 2013?
2. Whether 2nd defendant in O.S.No.188 of 2013 is proper and necessary party in the suit?
3. Whether the D.1 in O.S.No.188 of 2013 (who is plaintiff in O.S.No.92 of 2015) is entitled for mandatory injunction as prayed for in O.S.No.92 of 2015?
4. To what relief?

8. The son examined himself as PW.1 and marked seven documents as Exs.A.1 to A.7. The father examined himself as DW.1 and marked 22 documents as Exs.B.1 to B.22.

9. On the basis of the oral and documentary evidence, the Court below concluded on issue No.1 that the son was not entitled to seek a relief of injunction against the father. On issue No.2 the trial Court held that the Inspector of Police was not a necessary and proper party. On issue NO.3 the trial Court held that the father is entitled to have his son evicted from the first floor. On the basis of these findings, the trial Court dismissed O.S.No.188 of 2013 filed by the son and decreed O.S.No.92 of 2015 filed by the father for eviction of the son.

10. As against the common judgment passed on 20.06.2016 in both the suits, the son filed two independent appeals in A.S.Nos.102 and 103 of 2016. But both the appeals were dismissed

by the VI Additional District Court, by a common judgment dated 28.02.2017, forcing the appellant/son to come up with the above second appeals.

11. In both the Memorandum of Appeal, the appellant has raised the following questions as the substantial questions of law arising for consideration:

1. Whether the suit for eviction by way of a mandatory injunction without issuing quit notice is maintainable in law, in view of specific denial of permissible possession by the defendant in the written statement?
2. Whether the appellant/son who is in settled and admitted possession and enjoyment of the suit schedule property, is entitled for the relief of permanent injunction against the respondent?
3. Whether the judgment and decree of the Courts below are perverse?
4. Whether the Courts below were right in granting a decree for eviction by way of a mandatory injunction, particularly when the defendant denied permissible possession and after the son had filed an injunction suit?

Question No.1

12. The first substantial question of law raised by the appellant/son is as to whether the suit for eviction by way of mandatory injunction without issuing quit notice is maintainable in law in view of specific denial of permissive occupation.

13. I do not think that the above question arises for consideration in the facts and circumstances of the case at all. It was not the case of the father that the first floor of the suit schedule property was let out to the appellant/son either on lease or on licence. The respondent/father allowed the appellant/son to occupy a portion of his property. It is not even the case of the appellant that he was paying any rent to the father. The permissive occupation of the appellant/son was only in consideration of the relationship between the parties. Therefore, the question of issue of any quit notice does not arise.

14. As a matter of fact, the appellant/son raised a weak plea as though the suit schedule property was purchased by his father from out of the income from ancestral properties. But in the course of trial nothing turned on the same.

15. On the contrary, the respondent/father filed Ex.B.6 mortgage deed dated 02.02.1978 and Ex.B.8, the letter of the L.I.C., of India sanctioning loan dated 09.07.1987 to show that the land was purchased by him and that he put up a construction by taking a loan from the L.I.C., of India. Ex.B.21 dated 13.05.2002 is the letter of the L.I.C of India showing settlement of the account. The property tax is assessed in the name of the respondent/father as seen from Ex.B.14 and the electricity meter is in the name of the father as seen from Ex.B.15.

16. Interestingly, the appellant/son did not choose to file any suit for partition on the ground that he has any interest in the suit property. He merely filed a suit for a bare injunction.

17. Therefore, in the absence of any claim for ownership or interest in the suit schedule property and in the absence of any pleading or proof to show either a lease or licence, the appellant/son had no right to continue in the suit schedule property. Hence, the question of issue of any quit notice did not arise.

Question No.2

17. The second substantial question of law raised by the appellant is as to whether he is entitled to the relief of permanent injunction in view of settled and admitted possession.

18. A person, who has no right or interest over a property, cannot seek an injunction against the true owner except to the extent that he should not be evicted otherwise than by due process of law. In as much as the respondent/father filed a suit for eviction, the question of throwing the appellant/son out of possession in a manner not known to law did not arise.

Question No.3

19. The third substantial question of law is actually a question of law framed almost by all the counsel in all second appeals as a matter of routine. If there are no actual substantial questions of law, it has become the practice to frame this question of law.

20. I have carefully gone through the judgment of both the Courts below. Both the Courts below have analyzed the pleadings and the evidence on record and come to the only conclusion that they could have in the given circumstances. The findings flowed out of the evidence and I find nothing perverse.

Question No.4

21. The fourth substantial question is as to whether the Court below could have granted a decree for eviction particularly when the defendant specifically denied permissive possession and after the appellant/son filed the suit for permanent injunction.

22. Merely by denying permissive possession and that too just for the purpose of denying, the appellant/son cannot disentitle the true owner of the property to take back his possession. The fact that the respondent/father is the owner of the property is clearly established. An attempt made in vain by the appellant/son to project the property as ancestral property, evaporated into thin air in the evidence. Therefore, the possession of the appellant/son was obviously nothing but permissive possession and the father always had a right to revoke such permission and recover the possession.

23. As a matter of fact, the evidence of the respondent/father shows that he allowed his son to occupy the first floor of the suit property in the year 2005 on account of his own advancement in age and the mother's ill-health. It is on record that the mother suffered a paralytic stroke in the year 1997. But instead of helping his parents at their advance age, the appellant/son is stated to have been a source of trouble. The respondent/father is now nearly 74 years of age and the mother passed away in 2012. Therefore, the respondent/father should be allowed to have a good quality of life at least for a few more years. Hence I find no justification to interfere with the judgments and decrees of the Court below. Therefore, the Second Appeals are dismissed.

24. As a sequel, the miscellaneous petitions pending in this appeals, if any, shall stand closed. There shall be no order as to costs.

10th July, 2017
Js

V. RAMASUBRAMANIAN, J



THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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