

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.149 OF 2015

JUDGMENT:

This Second Appeal is filed, under Section 100 of C.P.C., by the second defendant assailing the decree and judgment dated 20.01.2012 in A.S.No.352 of 2009 on the file of the Court of the I Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, wherein and whereby the decree and judgment dated 24.11.2009 in O.S.No.540 of 2005 on the file of the Court of the III Additional Junior Civil Judge, Ranga Reddy District, granting perpetual injunction in favour of the plaintiff, was confirmed.

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed before the trial Court, to avoid confusion.

3. The averments made in the plaint are briefly as follows: The plaintiff is the absolute owner and possessor of plot Nos.173 to 175 in an extent of 1062 square yards situated in Survey Nos.198 and 199 of Yapral Village, Malkajgiri Mandal, having purchased the same under a registered sale deed No.4767 of 1992. The plaintiff has been in possession and enjoyment of the suit schedule property since 1992. The defendants, without any right whatsoever, are interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff. The defendants in collusion with each other tried to interfere into the suit schedule property on 19.03.2005. Hence, the suit for perpetual injunction.

4. The defendants filed written statement denying all the averments made in the plaint *inter alia* contending that the suit for

bare injunction is not maintainable. This Court has no jurisdiction to entertain the suit. The brother of the second defendant by name R.M.Manohar, who was a resident of Begumpet, executed a gift deed in her favour on 04.03.1985 and the same was notarised by an advocate notary which was validated by the Sub-Registrar on 28.02.2005. In the sale deed it is not mentioned how the vendor of the plaintiff acquired the suit schedule property. As the second defendant is an employee in Police Department, the first defendant, who belongs to the same village and is a known person to the second defendant, is looking after the suit schedule property. There is no cause of action to file the suit. Hence, the suit is liable to be dismissed.

5. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is owner and possessor of suit property?
2. Whether the plaintiff is entitled for perpetual injunction as prayed for?
3. Whether the plaintiff is in lawful possession over suit property as prayed for?
4. To what relief?

6. To substantiate the case, before the trial Court, the plaintiff examined himself as PW.1 and got marked Exs.A.1 to A.4. To nonsuit the plaintiff, the second defendant examined herself as DW.1 and got marked Exs.B.1 to B.15. DW.2 was examined to prove the stand of second defendant.

7. After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff has been in possession and enjoyment of the suit schedule property much less

as on the date of filing of the suit; consequently, decreed the suit in favour of the plaintiff by granting relief of perpetual injunction. Feeling aggrieved by the decree and judgment of the trial Court, the second defendant alone has preferred A.S.No.352 of 2009 on the file of the Court of the I Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad. The first appellate Court, after reappraising the oral and documentary evidence, without being influenced by the findings recorded by the trial Court, arrived at a conclusion that the plaintiff is entitled to the relief of perpetual injunction; consequently, dismissed the appeal. Hence, the second defendant preferred the present second appeal.

8. Heard Sri T.Surya Satish, the learned counsel for the appellant-second defendant, Sri V.L.N.G.K.Murthy, learned Senior Counsel, appearing on behalf of Sri G.Kiran Kumar Reddy, learned counsel for the plaintiff and perused the material available on record.

9. The questions of law urged by the learned counsel for the appellant are as follows:

1. Whether the findings recorded by the Courts below are perverse? and
2. Whether the Courts below committed error while believing Ex.A.1 sale deed, discarding Ex.B.15 gift deed?

10. Question Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the questions simultaneously in order to avoid recapitulation of facts and evidence.

11. The plaintiff filed the suit for perpetual injunction in respect of house plots bearing Nos.173 to 175 in an extent of 1062 square

yards in Survey Nos.198 and 199 of Yapral Village, Malkajgiri Mandal, Ranga Reddy District. The plaintiff is claiming the suit schedule property basing on registered sale deed Ex.A.1 dated 21.10.1992 executed by G.P.A. holder of Raj Mohini in his favour. The defendants are claiming the suit schedule property basing on Ex.B.15 gift deed. Ex.B.15 is the gift deed purported to have been executed by R.M.Manohar in favour of the second defendant. The second defendant is none other than the own sister of R.M.Manohar. In a suit for perpetual injunction, the plaintiff has to establish that he has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. Once the plaintiff establishes his possession over the suit schedule property, the onus of proof shifts on the defendant to establish that the plaintiff was not in possession of the suit schedule property as on the date of filing of the suit. As per the contention of the plaintiff, the suit schedule property is a vacant site. As per the contention of the second defendant, the suit schedule property consists a house. Whether the suit schedule property is a vacant site or whether a house is situated in it is purely a disputed question of fact. As per the finding of the Courts below, the suit schedule property is a vacant site. The second defendant failed to establish that a house is situated in the suit schedule property. A perusal of the record reveals that an extent of Ac.26.37 guntas of land in Survey Nos.198 and 199 of Yapral Village, Malkajgiri Mandal, belongs to Lalith Raj, Ram Manohar Raj, Iqbal Raj and Kushal Raj. The plaintiff purchased the suit schedule property from the wife of Ram Manohar. As per the

recitals of Exs.B.1 to B.8 and Ex.A.2 pahanies, the above said four persons are the original pattadars.

12. It is the case of the second defendant that her brother got the house property from one Kushal Raj in pursuance of the settlement arrived at in O.S.No.3 of 1981. As per the testimony of DW.2, R.M.Manohar and Kushal Raj have settled the disputes between them in his house and the suit schedule property was allotted to R.M.Manohar. R.M.Manohar in turn executed Ex.B.15 gift deed in favour of the second defendant. A gift deed is an attestable document. As per Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act, the Court cannot place reliance on an attestable document without examining one of the attestors. In the instant case, the attesor of Ex.B.15 was not examined; therefore, the Courts below have not placed any reliance on it. The trial Court made an observation that the stamp paper on which Ex.B.15 was prepared was not purchased from the Registrar's Office. The trial Court also made an observation that Ex.B.15 gift deed was prepared on a fabricated stamp paper. A perusal of Ex.A.3 reveals that Raj Mohini, wife of Ram Manohar, executed a G.P.A. in favour of one N.Satyanarayana Raju, who in turn executed a sale deed in favour of the plaintiff.

13. Learned counsel for the appellant-second defendant submitted that a simple suit for injunction is not maintainable in view of title dispute. As observed earlier, the plaintiff is claiming the vacant site, whereas the second defendant is claiming house property. It is not the case of the second defendant that the suit schedule property is the vacant site. Therefore, there is no title dispute between the parties. In such circumstances, the plaintiff

is entitled to file a suit for perpetual injunction. Unless and until a contrary is proved, the Court can place reliance on a registered sale deed. As per the recitals of Ex.A.1, one Satyanarayana Raju, G.P.A. holder of Raj Mohini delivered the suit schedule property in favour of the plaintiff. Absolutely there is no material available on record to establish that a house is existing in the suit schedule property. It is not in dispute that Raj Mohini is the wife of Ram Manohar. As per the testimony of DWs.1 and 2, R.M.Manohar and Ram Manohar are not one and the same persons. It is the case of the second defendant that R.M.Manohar got the suit schedule property under a compromise decree in O.S.No.3 of 1981. A perusal of Ex.B.9 reveals that O.S.No.3 of 1981 was dismissed as not pressed. If really R.M.Manohar got the suit schedule property covered under Ex.B.15 under a compromise decree, what prevented the second defendant to produce the same? In the absence of compromise decree, it is not possible to arrive at a conclusion that R.M.Manohar got the suit schedule property covered under Ex.B.15 from one Kushal Raj, who is one of the original pattadars. The second defendant has not filed any document to establish the source of title to R.M.Manohar. The Courts below rightly discarded Ex.B.15 gift deed for non-examination of one of the attestors. A perusal of the record reveals that Ex.B.15 is an unregistered document. A gift deed requires registration as contemplated under Section 17 of the Registration Act. In such circumstances, much reliance cannot be placed on Ex.B.15.

14. The other contention of the learned counsel for the appellant-second defendant is that the trial Court as well as the

first appellate Court has not given any specific finding whether the defendants are interfering with the suit schedule property or not? In order to appreciate the contention of the learned counsel for the appellant, it is not out of place to extract hereunder Sub-Section (3) of Section 38 of the Specific Relief Act.

“38. Perpetual injunction when granted:-

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:-

- (a) where the defendant is trustee of the property for the plaintiff;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that compensation in money would not afford adequate relief;
- (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.”

15. A perusal of the above provision at a glance clearly demonstrates that if the defendant invades or threatens to invade legal right of plaintiff, certainly the plaintiff is entitled to file a suit for perpetual injunction. Therefore, I am unable to accede to the contention of the learned counsel for the appellant that the suit is not maintainable under law. For one reason or other, the first defendant did not choose to file an appeal challenging the decree and judgment in O.S.No.540 of 2005. The decree and judgment passed by the trial Court became final so far as the first defendant is concerned. The second defendant having failed to establish her right over the suit schedule property has no right whatsoever to interfere with the suit schedule property. The material placed before the Court clinchingly establishes that the second defendant was interfering with the suit schedule property without any right whatsoever. In such circumstances, the plaintiff is justified by

filing a suit seeking the relief of perpetual injunction. The Courts below concurrently held that the plaintiff has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. Whether the plaintiff was in possession of the suit schedule property as on the date of filing of the suit is purely a question of fact. The first appellate Court is the fact finding final Court. This Court shall not lightly interfere with the concurrent findings of fact recorded by the Courts below unless those findings are contrary to pleadings or settled principles of law. In the instant case, the findings recorded by the Courts below are based on pleadings of both parties. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. Therefore, I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the Courts below are perverse and liable to be set aside.

16. In **Municipal Committee, Hoshiarpur v. Punjab SEB¹**, while dealing with the scope of Section 100 of C.P.C., the Hon'ble apex Court held at paragraph No.16 as follows:

“16. ... A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. ...”

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the

¹ (2010) 13 SCC 216

considered view that the questions of law urged by the learned counsel for the appellant will not fall within the ambit of Section 100 of C.P.C. The questions of law raised by the appellant have no substance. Hence, the appeal is liable to be dismissed. Learned counsel for the appellant submitted that he is not pressing S.A.M.P.No.417 of 2015.

18. In the result, the Second Appeal is dismissed at the stage of admission and S.A.M.P.No.417 of 2015 is dismissed as not pressed. Registry is directed to return the original documents filed in S.A.M.P.No.417 of 2015 to the appellant as per procedure. There shall be no order as to costs.

19. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

Date: 26.12.2017
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T. SUNIL CHOWDARY, J

