

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.667 OF 2014

JUDGMENT:

This Second Appeal is filed, under Section 100 of C.P.C., by the unsuccessful plaintiff assailing the decree and judgment dated 03.06.2013 in A.S.No.38 of 2011 on the file of the Court of the Senior Civil Judge, Mangalagiri, wherein and whereby the decree and judgment dated 09.08.2011 in O.S.No.231 of 2007 on the file of the Court of the Principal Junior Civil Judge, Mangalagiri, granting perpetual injunction in favour of the plaintiff, was reversed.

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 purchased the suit schedule property from Smt. Karumanchi Lalithamma, wife of late Prasada Rao, Arjampudi Village, Gannavaram Mandal of Krishna District, under a registered sale deed dated 20.02.2007 for a valid consideration. The vendors of the plaintiff delivered the suit schedule property in favour of the plaintiff on the same day. The plaintiff with an intention to make construction of a house in the suit schedule property submitted an application to Pedaparimi Grampanchayat. The Grampanchayat after following the due procedure granted permission to the plaintiff for construction of the house. Defendant Nos.1 and 4 are children of defendant No.3. The second defendant is the wife of first defendant. The defendants are having vacant house site on the north of the suit schedule property. The

defendants without any right whatsoever interfering with the suit schedule property. Hence, the suit.

4. The second defendant remained *ex parte*. Defendant Nos.1, 3 and 4 filed written statement denying all the averments made in the plaint *inter alia* contending that the suit for injunction simplicitor without seeking the relief of declaration of title is not maintainable. The defendants have issued notices to the vendors of the plaintiff, which fact is known to the plaintiff. The plaintiff by suppressing all those facts filed the present suit with false and untenable allegations. One Karumanchi (Bheemla) Meeramma is the wife of Karumanchi Prasad of Pedaparimi Village, Tadikonda Mandal, Guntur District. One Karumanchi Lalithamma and Ananda Kumar are falsely claiming that they are the wife and son of Prasad. The first defendant is the son, third defendant is the wife and the fourth defendant is the daughter of Karumanchi Mariyanna. Mariyanna and the first defendant are members of the joint family. The said Mariyanna died leaving behind him defendant Nos.1, 3 and 4 as his legal representatives. Defendant Nos.1, 3 and 4 inherited the properties of late Mariyanna including suit schedule property. On 06.05.1978 Karumanchi Prasad executed an agreement of sale in favour of Karumanchi Mariyanna after receiving an amount of Rs.200/- from him. The said Karumanchi Prasad delivered the suit schedule property in favour of Mariyanna. The defendants have been in possession and enjoyment of the suit schedule property since 1978. The plaintiff is not in possession of the property at any point of time. 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 having valid title and lawful possession over the plaint schedule property as on the date of filing of the suit or not?
2. Whether the plaintiff is entitled for decree of permanent injunction restraining the defendants, their men, etc., from interfering with the plaintiff's peaceful possession and enjoyment of plaint schedule property with costs or not?
3. To what relief?

6. Before the trial Court, on behalf of the plaintiff, PWs.1 to 3 were examined and Exs.A.1 and A.2 were marked. On behalf of the defendants, DWs.1 and 2 were examined and Exs.B.1 to B.9 were marked.

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 is entitled for the relief of perpetual injunction and consequently, decreed the suit. Feeling aggrieved by the decree and judgment dated 09.08.2011 in O.S.No.231 of 2007 on the file of the Court of the Principal Junior Civil Judge, Mangalagiri, the defendants have preferred A.S.No.38 of 2011 on the file of the Court of the Senior Civil Judge, Mangalagiri. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the suit for perpetual injunction without seeking the relief of declaration is not maintainable. The first appellate Court also arrived at a conclusion that the plaintiff was not in possession of the suit schedule property as on the date of filing of the suit and allowed the appeal by setting aside the decree and judgment of the trial

Court. Hence, the second appeal is preferred by the unsuccessful plaintiff.

8. Heard the learned counsel for the appellant-plaintiff and the learned counsel for the respondents-defendants.

9. The question of law urged by the learned counsel for the appellant is: *Whether the plaintiff is not entitled to file a suit for perpetual injunction without seeking the relief of declaration?*

10. It is the case of the plaintiff that he purchased the suit schedule property from one Karumanchi Lalithamma and her son under original of Ex.A.1 registered sale deed dated 20.02.2007. Ex.A.2 is the building plan dated 30.06.2002 approved by Pedaparimi Grampanchayat. It is the case of the defendants that Karumanchi Mariyanna purchased the suit schedule property under an agreement of sale dated 06.05.1978 (Ex.B.1) from Karumanchi Prasad. Prior to filing of the suit, the defendants got issued legal notices dated 10.04.2007 and 08.06.2007 under Exs.B.2 and B.3 to Karumanchi Lalithamma directing her to execute a regular sale deed. Exs.B.6 and B.7 are the postal acknowledgments dated 11.04.2007 and 11.07.2007. A perusal of the record reveals that the defendants got issued legal notices to Meeramma, Lalithamma and Ananda Kumar. It is the further case of the defendants that Lalithamma is not the wife of late Prasad. The material placed before the Court establishes that Meeramma is claiming to be the legally wedded wife of Prasad. Karumanchi Lalithamma, vendor of the plaintiff, is also claiming to be the legally wedded wife of Prasad. Both the Courts below have not given any finding on this aspect. Therefore, it is not fair on the

part of this Court to express any opinion with regard to relationship between Karumanchi Prasad and Lalithamma.

11. As per the recitals of Ex.B.1 agreement of sale, late Prasad executed an agreement of sale in favour of Mariyanna on 06.05.1978 after receiving the total consideration of Rs.200/- and delivered the property in favour of Mariyanna. Defendant Nos.1, 3 and 4 have taken a specific plea in the written statement that Lalithamma is not the legally wedded wife of Prasad. The defendants have also taken a specific plea that Lalithamma and her son have no right whatsoever to execute Ex.A.1 sale deed in favour of the plaintiff. There is no dispute with regard to the identity of the suit schedule property. Exs.B.1 and A.1 relate to suit schedule property. Ex.B.1 document was executed 29 years prior to Ex.A.1. It is also an admitted fact that the defendants are having vacant house site on the north of the suit schedule property. In such circumstances, as observed by the appellate Court, the probability of purchase of property by Mariyanna cannot be ruled out completely. In the legal notices, the defendants claimed that they are the owners of the suit schedule property. The plaintiff is very much aware of denying his vendors title as well as his title. For one reason or other, the plaintiff has not taken any steps for amending the plaint seeking the relief of declaration.

12. The trial Court arrived at a conclusion that the plaintiff has been in possession of the property basing on Ex.A.1 sale deed. The plaintiff did not choose to examine the neighbouring owners. As per the testimony of PW.3, the defendants have been in possession and enjoyment of the suit schedule property. The trial Court has

lost sight of the testimony of PW.3. Had the trial Court appreciated the testimony of PW.3 in right perspective, its finding would be otherwise so far as the aspect of plaintiff is in possession of suit schedule property is concerned. PW.3, who is the plaintiff's own witness, supported the case of the defendants. Having regard to the facts and circumstances of the case, this Court is of the considered view that the plaintiff was not in possession of suit schedule property as on the date of filing of the suit. The material placed before the Court cast a cloud on the title of the plaintiff. In order to resolve this issue, this Court is placing reliance on the decision in **Anathula Sudhakar v. P.Buchi Reddy (Dead) by L.R.s and others**¹, wherein the Hon'ble Apex Court held at paragraph No.21 as follows:

“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

¹ (2008) 4 SCC 594

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar V. Alagammal* ((2005) 6 SCC 202). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

13. As per the principle enunciated in the case cited *supra*, if there is a cloud on the title of the plaintiff, he ought to have filed a suit for declaration and consequential perpetual injunction.

14. In the instant case, as observed earlier, there is a cloud on the title of the plaintiff, in such circumstances, he ought to have filed a suit for declaration and consequential relief of perpetual injunction. For one reason or other, the plaintiff did not choose to file a suit for declaration and simply filed suit for perpetual injunction. The first appellate Court considered the factual and

legal aspects in right perspective and arrived at a conclusion that the plaintiff is not entitled to file a simple suit for perpetual injunction without seeking the relief of declaration. The findings recorded by the first appellate Court are supported by evidence much less legally admissible evidence. I am fully endorsing the findings recorded by the first appellate Court. The first appellate Court is the fact finding final Court. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the plaintiff is not entitled to file a simple suit for perpetual injunction without seeking the relief of declaration.

15. In **Municipal Committee, Hoshiarpur v. Punjab SEB²**, 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.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the question of law urged by the learned counsel for the appellant will not fall within the ambit of Section 100 of C.P.C. The question of law raised by the appellant has no substance. Hence, the appeal is liable to be dismissed.

² (2010) 13 SCC 216

17. In the result, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 06.12.2017
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