

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.337 OF 2014

JUDGMENT:

The plaintiff in O.S. No.151 of 2006, on the file of Principal Junior Civil Judge, Karimnagar, who succeeded before the trial Court, but, however, failed to succeed before the III Additional District Judge, Karimnagar, as it set aside the judgment and decree, dated 26.04.2010, in O.S. No.151 of 2006, passed by the trial Court, by the judgment and decree dated 09.04.2014 in A.S. No.28 of 2010, challenging the same, preferred the present Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (CPC).

2. The present second appeal is disposed of at the stage of admission having felt that substantial questions of law now formulated by the plaintiff is difficult to view constituting substantial questions of law as they do centre mainly on the factual aspects.

3. Heard Sri L. Prabhakar Reddy, learned counsel for the appellant - plaintiff, and Sri P.V. Narayana Rao, learned counsel for the respondent - defendant.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the original suit before the trial Court.

5. In assessing whether there was any patent illegality warranting interference in the judgment and decree passed by the first appellate Court, it is necessary to refer to certain facts which are absolutely indispensable.

i) The suit schedule property is an extent of Acs.4.22 guntas comprised of Survey No.21, situated at Elgandal Village of Karimnagar Mandal and District within specific boundaries shown in the plaint schedule. The plaintiff sought the relief of perpetual injunction simplicitor. He purchased it from Smt. Gopishetti Yashoda, wife of Narsaiah, and Jangili Yellamma, wife of Gattaiah of Choppadandi Village and Mandal for a valid consideration under a registered sale deed bearing document No.546 of 2005, dated 26.04.2005, which was originally owned and possessed by Smt. Puppala Raju and Smt. Puppala Lasmamma. Possession thereof was delivered to the plaintiff. According to the plaintiff, since the date of purchase, he has been in actual physical possession and enjoyment thereof. The vendors of the plaintiff are daughter and grand daughter of late Smt. Puppala Raju and late Smt. Puppala Lasmamma. Since the defendant attempted to unjustly grab the suit land with the help of the land grabbers, the plaintiff filed the suit.

ii) The defendant's case is that Smt. Puppala Rajamma and Smt. Puppala Lasmamma are original owners of the suit land. He denied the allegation that Smt. G. Yashoda was daughter of Smt. Puppala Rajamma, and Yellamma being the grand daughter of

Smt. P. Lasmamma, and even denied execution of sale deed in favour of the plaintiff.

a) The defendant sets out his case averring that his father viz., Eldandi Narsaiah, son of Venkataiah, purchased the suit land from Smt. Puppala Rajamma and Smt. Lasmamma in the year 1971 through a simple sale deed and ever since his purchase, his father, and thereafter, himself, have been cultivating the suit land and even Patta Passbook and title deed were issued by the Revenue Authorities, and Smt. G. Yashoda and Smt. J. Yellamma have no right over the suit land and, thus, disputed relationship of Smt. G. Yashoda being the daughter of Smt. P. Raju and Smt. J. Yellamma being the grand daughter of Smt. P. Lasmamma.

b) According to the defendant, correct name of the said P. Raju is Smt. Puppala Rajamma, and Smt. P. Rajamma and Smt. P. Lasmamma are co-sisters. Smt. G. Yashoda and Smt. J. Yellamma are not concerned with Smt. P. Rajamma and Smt. P. Lasmamma, and they have no right to alienate the suit land to the plaintiff, and that the plaintiff will not get any title or right over the suit land, and having created false documents, the plaintiff is trying to occupy the suit land.

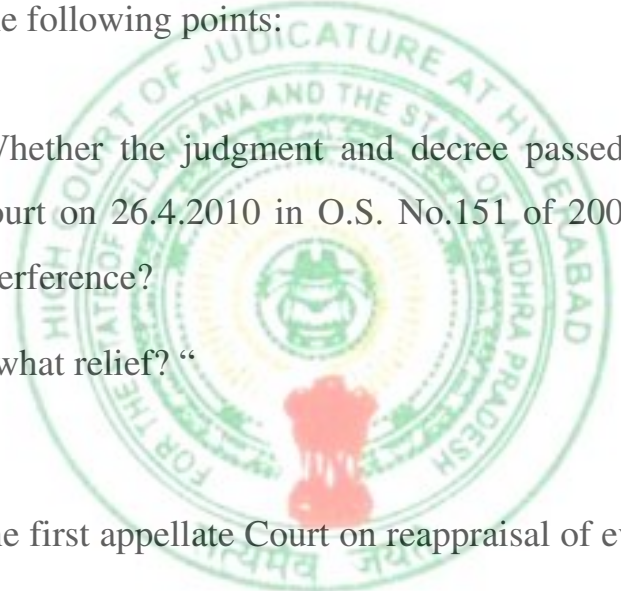
6. The trial Court settled two issues for trial. But the main issue is the first issue to the effect, whether the plaintiff is entitled to perpetual injunction as prayed for?

7. To substantiate their respective cases, the plaintiff himself examined as PW.1 and marked Exs.A-1 and A-2, which are original registered sale deed No.546 of 2005 and Encumbrance Certificate, respectively, whereas the defendant examined himself as DW.1 and also one Myaka Danaiah as DW.2, and marked Exs.B-1 to B-5, which are certified copy of Form - 1(B), letter issued by P.A.C.C.S. Limited, Karimnagar, certified copy of Form - 13B, certified copy of Form - 13C and certified copy of the appeal along with the written statement filed before the Revenue Divisional Officer, Karimnagar.

8. The learned trial Court, based on the recitals in Exs.A-1 and A-2, mainly carried away by the entries in Ex.A-2, finding that except the name of PW.1 and his vendors as executants, no other transaction, such as mortgage or any transfer of right over the suit land, are noted therein, disbelieved the case of the defendant. On Exs.B-1 to B-5, the trial Court found that since the simple sale deed is not filed and it has not seen light of the day, they are not reliable for the reason that Ex.B-1 does not bear signature of the Mandal Revenue Officer, Ex.B-2 does not bear file number and Exs.B-3 and B-4 having been issued in the year 1995 showing the name of the father of the defendant, whereas, father of the defendant died in the year 1992 itself, and ought not to have been issued in the name of a dead person and, thus, it would reflect nothing but fraud having been practiced in obtaining them, more particularly, in the presence of the answers given by DW.1 in his cross-examination that his uncle, Rajaiah was retired as Deputy

Tahsildar and during his service, he worked at M.R.O. office and Collectorate office at Karimnagar and his brother-in-law, Satyanarayana, worked as Revenue Inspector at Karimnagar, and out of the said relationship, managed to get Exs.B-1 to B-4 and, therefore, they do not help the defendant to prove his title, and thereby decreed the suit, by the judgment and decree, dated 26.04.2010.

9. Aggrieved over the same, when an appeal is preferred by the defendant in A.S. No.28 of 2010, the learned appellate Court formulated the following points:

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- “1. Whether the judgment and decree passed by the trial court on 26.4.2010 in O.S. No.151 of 2006 needs any interference?
 2. To what relief? “

10. The first appellate Court on reappraisal of evidence, having found that the plaintiff was totally relying on the sale deed under Ex.A-1 to prove his possession despite the defendant disputing his title itself, referring to the ruling relied on by the learned counsel for the defendant in **Ananthula Sudhakar v. P. Buchi Reddy (dead) by L.Rs.**¹, and opining that the trial Court erred in appreciating the evidence since the trial Court lost sight of the fact that the plaintiff was seeking perpetual injunction and had to prove his possession and cannot take advantage of the weaknesses in the defendant's case as

¹. 2008 SAR (Civil) 878 SC

the Court was not giving any relief to the defendant declaring his title and, therefore, the trial Court was not right in commenting on Exs.B-1 to B-5 as regards title of the defendant and since the plaintiff did not file any documents to prove his possession, nor examined any witnesses to substantiate his possession and since title of the plaintiff is under a cloud or in dispute and is not in possession or not able to establish his possession, the right thing the plaintiff ought to have done was seeking the relief of declaration of title and referring to the decision relied on by the learned counsel for the defendant in **Yamparala Venakteswarlu v. Shaik Khatumbi**² for the proposition that in a suit for perpetual injunction, there is no need to prove title, extracted paragraph No.4 in that decision. The learned appellate Court holding that the plaintiff has not filed any documents to prove his possession and only filed documents to prove his title which is disputed by the defendant, and the ruling relied on by the learned counsel for the plaintiff was rendered in a different fact-situation and would not render any assistance, allowed the appeal on 09.04.2014, setting aside the judgment and decree passed by the trial Court and dismissed the suit accordingly.

11. In paragraph No.16, the learned appellate Court observed that the plaintiff failed to convert the suit for declaration of title even though, written statement was filed questioning the title and in the absence of prayer for declaration of title, the parties cannot be said to

² 1998 ALT (5) 602

have an opportunity to have a full-fledged adjudication regarding the title.

12. Questioning the aforesaid judgment and decree, dated 09.04.2014, the plaintiff preferred the present second appeal. The plaintiff contends that the learned first appellate Court has not properly appreciated the evidence on record and somehow, overlooked the principle that 'possession follows title', and thereby ought to have decreed the suit and it was not mandatory for the plaintiff to take steps for amendment of the plaint and having recorded as such, and thereby holding that the suit was not maintainable is not on correct-lines. The plaintiff has set out the following substantial questions of law for consideration in paragraph No.5 thus:

“(i) Whether the learned appellate court justified in reversing the well considered judgment of the trial Court by improper appreciation of pleadings and evidence and coming to a wrong and perverse conclusion, being a final fact finding court?

(ii) Having accepted the validity and proof of the registered Sale Deed of the plaintiff under Ex.A-1, whether the learned appellate Court is justified in dismissing the suit for injunction on the ground that no steps were taken by the plaintiff for seeking declaration of title by way of amending the suit?

(iii) Whether, in a simple suit for injunction, the courts are precluded from going into the title of the

plaintiff and the judgment of the learned appellate court, without deciding the title inspite of specific pleadings and evidence available on record, dismissing the injunction suit, is vitiated in law?

(iv) Whether the learned appellate court, without setting aside the findings of the trial Court, with regard to the invalidity and veracity of Ex.B-3 and B-4 coupled with admission of DW-1, is justified in reversing the judgment and decree of the trial Court on mere presumption?.”

13. The learned counsel for the plaintiff while submitting that his suit for perpetual injunction simpliciter is maintainable without seeking the declaratory relief, would also submit that the first appellate Court went wrong in recording a finding that the suit was liable to be dismissed as the plaintiff failed to convert the suit, one for declaration of title, and, therefore, that finding recorded by the first appellate Court is patently perverse.

14. His next submission is that the findings recorded by the trial Court touching Exs.B-1 to B-5 and discarding the evidentiary value thereof since based on cogent reasons, on appreciation of evidence, the first appellate Court without discussing anything thereon, just recorded a finding that a suit for perpetual injunction simpliciter is not maintainable without seeking the relief of declaration of title as the defendant in his written statement disputed the title.

15. It is his further submission that the written statement, on a plain reading, does not disclose that the defendant disputed the title of the plaintiff or the original owners. It is his submission that their common case is that the suit land was owned and possessed by Smt. P. Rajamma and Smt. P. Lasmamma. The mere fact that the defendant disputed the relationship of vendors of the plaintiff with that of Smt. P. Rajamma and Smt. P. Lasmamma, it cannot be said that a specific plea was taken or denial was made by the defendant. In support of his submissions, the learned counsel placed reliance in **Chepana Peda Appalaswamy v. Chepana Appalanaidu³, P. Buchi Reddy v. Ananthula Sudhakar⁴, M.B. Ramesh v. K.M. Veeraje URS⁵ and Akula Sangappa v. Bandam Siddappa⁶.**

16. The learned counsel for the respondent would *inter alia* submit that the trial Court, in fact, went wrong in discarding Exs.B-1 to B-5 and decreeing the suit solely projecting the alleged weaknesses in the case of the defendant which is against the well settled principle and just based on Exs.A-1 and A-2, which are registered sale deed and encumbrance certificate, respectively, without there being any documentary evidence to prove that the vendors of the plaintiff were in possession of the suit property till the date of filing of the suit and the submission of the learned counsel for the plaintiff that possession follows title is inapt in applying to the present fact-situation and while

³ 1996 (2) ALD 499

⁴ (2013) 7 SCC 490

⁵ (2013) 7 SCC 490

supporting the judgment and decree of the first appellate Court, the learned counsel placing reliance on the very same ruling referred to by the learned first appellate Court would contend that the suit ought to have been dismissed at the threshold as the defendant has taken a specific plea disputing the title of the vendor of the plaintiff. The learned counsel has also placed reliance in **Bhaiyalal v. Ram Din**⁷, **Nandkishor Savalaram Malu (Dead) v. Hanumanmal G. Biyani (D)**⁸, **Ganeshi v. Ashok**⁹, **Dr. Yadla Ramesh Naidu v. Sub-Registrar, Sabbavram, Visakhapatnam District**¹⁰, **Indukuru Ramachandrareddy v. Agnigundala Venkata Ranga Rao**¹¹ and **Ananthula Sudhakar**¹.

17. Turning to the submissions made, when examined applying the legal principles laid down by the Hon'ble Supreme Court and the decisions referred to by the High Courts, the pleadings as well as the evidence require advertence.

18. When the question, whether there has been any dispute in regard to title between the parties is analysed, in paragraph No.3 of the written statement, the defendant has specifically denied the allegation of the plaintiff that his vendors were the original owners of the suit land and the sale transaction projected by the plaintiff; in paragraph No.6, the defendant disputed the relationship of Smt.

⁶ 2016 (1) ALT 368

⁷ AIR 1989 ALLAHABAD 130

⁸ 2017 (2) SCJ 116

⁹ AIR 2011 SC 1340

¹⁰ 2009 (1) ALD 337

¹¹ 2012 (4) ALT 569

Gopishetti Yashoda and Smt. Jangili Yellamma as the daughter of Smt. P. Rajamma and grand daughter of Smt. P. Lasmamma, respectively. Thus, the defendant disputed the relationship of vendor's of the plaintiffs as the legal heirs of Smt. P. Rajamma and Smt. P. Lasmamma and the competency or the right over the suit property of the vendors of the plaintiff to alienate the suit property. The defendant averred that since vendors of the plaintiff have no right to alienate the suit property to the plaintiff through the registered sale deed, the plaintiff will not get any title or right over the suit land. Simultaneously, he got averred that it is his father, who purchased the suit land and other lands in different survey numbers from Smt. Rajamma and Smt. Lasmamma in the year 1971 itself. In paragraph No.8, the defendant stated that the plaintiff is trying to occupy the suit land from the rival owner i.e. himself and for that purpose, the plaintiff filed the suit with false averments with a *mala fide* intention to cause loss to him. Thus, it is clear that title of the plaintiff is disputed by the defendant setting up his title over the suit property and source of title. In such an event, a suit for injunction simpliciter can be maintained or not is the question that requires an answer.

19. To impress upon this Court, the learned counsel placed reliance in **Chepana Peda Appalaswamy**³, wherein, a learned Single Judge of this Court held that a suit for injunction without declaration is maintainable and an application for amendment of plaint seeking relief of declaration is also unnecessary. The said ruling was rendered

in the context of disposing of a civil revision petition. In **P. Buchi Reddy**⁴, another learned Single Judge of this Court in the context of Section 38 of Specific Relief Act, 1963, held that a suit for mere perpetual injunction is maintainable even without seeking the relief of declaration of title.

20. At this stage, it is pertinent to mention that the same was challenged by the respondents in **Ananthula Sudhakar**¹ carrying the matter to the Hon'ble Supreme Court, which was referred to supra, and the Hon'ble Supreme Court, ruled that when the title is disputed or where there is cloud over the title, the suit for bare injunction without seeking declaration of title is **UNCALLED FOR**. It would be referred to a little later.

21. In the context of question of law, the learned counsel refers to observation of the Hon'ble Supreme Court in paragraph No.16 of the ruling in **M.B. Ramesh**⁵, which is thus:

“16. We may, however, note in this behalf that as held by a Constitution Bench of this Court in *Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.*(AIR 1962 SC 1314), it is well settled that the construction of a document of title or of a document which is the foundation of the rights of parties, necessarily raises a question of law. That apart, as held by a Bench of three Judges in *Santosh Hazari v. Purshottam Tiwari* [(2001) 3 SCC 179], whether a particular question is a substantial question of law or not, depends on the facts and circumstances of each

case. When the execution of the will of Smt Nagammanni and construction thereof was the subject-matter of consideration, the framing of the question of law cannot be faulted. Recently, in *Union of India v. Ibrahim Uddin* [(2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362], this Court referred to various judgment in this behalf and clarified the legal position in the following words: (SCC p. 176, para 67)

“67. There is no prohibition to entertain a second appeal even on question of fact, provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse.””

22. In **Akula Sangappa**⁶, a learned Single Judge of this Court, in the context of what constitutes substantial questions of law held that when the findings of the Court below are manifestly unreasonable or unjust in the context of facts and evidence on record, High Court is obliged under law to set aside such an erroneous finding as injustice. This ruling is relied on by the learned counsel to point out that the appellate Court went wrong in tendering findings that there has been dispute in regard to title and a cloud is caused over the suit property and that finding is manifestly unreasonable when the reasoning assigned by the trial Court in tendering findings on Exs.B-1 to B-5 were considered. It is also the learned counsel's submission that there has been no reference to the findings recorded by the trial Court based

on Exs.B-1 to B-5 by the appellate Court. But, it is not so, for the reason that the appellate court's judgment refers to Exs.B-1 to B-5 in paragraph No.16.

23. The question now is can it be said that the finding recorded by the appellate Court that there is a title dispute and the suit for mere perpetual injunction without seeking the declaratory relief is manifestly unreasonable.

24. In the above direction, the submission of the learned counsel placing reliance in **Ananthula Sudhakar**¹ would give an answer.

25. The first appellate Court has extracted paragraph Nos.11, 12, 13, 14 and 17 from the said judgment where general principles have been laid down in paragraph No.11 by the Hon'ble Supreme Court and summarized the position as regards the suits for prohibitory injunction relating to immovable property in paragraph No.17. It is, of course, unnecessary to extract once again the principles laid down by the Hon'ble Supreme Court. Suffice it to say, the principle laid down in paragraph No.11.3 is relevant and clinches the issue resolving the controversy in the present appeal. It is thus:

“11.3 Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the

consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.”

26. Thus, it is clear, where title to the property is in dispute, despite the plaintiff is in possession or under a cloud or where the defendant asserts title thereto and there is also threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and consequential relief of injunction. Despite the fact that the first appellate Court has referred to and relied on the present ruling, still, the learned counsel for the plaintiff has placed reliance on the judgment rendered by this Court in the Second Appeal which was the subject matter before the Hon’ble Supreme Court. The conclusion is in paragraph No.29 and it is relevant to refer to paragraph No.27 even. The Hon’ble Supreme Court observed that the High Court exceeded its jurisdiction under Section 100 of CPC in re-examining the questions of fact, secondly, by going into the questions, which were not pleaded and which was not subject matter of an issue, thirdly, by formulating questions of law, which do not arise and lastly, by interfering with the well reasoned judgment of the first appellate Court which held that the plaintiffs ought to have filed a suit for declaration, and allowed the appeal setting aside the judgment of this Court. Therefore, there is every reason for the first appellate Court in holding that the plaintiff ought to have amended the relief by

introducing the relief for declaration of title instead of continuing to seek the relief of perpetual injunction simpliciter.

27. The other judgment relied on by the learned counsel for the plaintiff in **Chepana Peda Appalaswamy**³ would not render any assistance to him.

28. The ruling in **Dr. Yadla Ramesh Naidu**¹⁰, would favour the defendant for the reason that the effect of registration of a document was expressed by a learned Single Judge of this Court that registration of transfer of immovable property by execution of a document by transferor in favour of transferee confers no title on transferee. Of course, it was rendered in the context of registering authority refusing to register a document while discharging its duties, but for the limited purpose that a proprietary title was conveyed, but no better title than what the vendor do have.

29. **Ananthula Sudhakar**¹, relates to whether the High Court failed to apply the settled legal principles.

30. In **Bhaiyalal**⁷, a learned single Judge of the Allahabad High Court expresses that a document exhibited only establishes its formal proof and the appellate Court entitled to weigh the evidence and to give finding on execution of document by a particular party.

31. Be that as it may, one thing pertinent to note is that the plaintiff has failed to submit any revenue record to show possession of

his vendors though, he asserts that his vendors are the original owners and in case, possession of the suit land by his vendors is shown by filing relevant *adangals*, that would have been suffice, at least, to construe, the possession has been delivered to the plaintiff. But, the plaintiff has not chosen to file relevant revenue records. It is no doubt true, it was contended that the entire extent of Acs.4.22 guntas was vacant, and, therefore, possession follows title. But, that principle cannot be made applicable to the fact-situation occurring in the instant case. It is also true that the defendant has not filed simple sale deed and no plausible reasons have been assigned, but it is settled law that weakness in the case of the defendant cannot enure to the benefit of the plaintiff to succeed in his suit.

32. Thus, viewed from any angle, the judgment and decree passed by the first appellate Court do not suffer from any patent illegality warranting interference to set it aside.

33. It is further observed that the plaintiff is not precluded from re-agitating the issue seeking the relief of declaration of title and consequential relief, if he so desirous, in which case, the observations made herein shall not come in the way in deciding the controversy therein.

34. The Second Appeal, therefore, fails and is dismissed at the stage of admission itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the Second Appeal stand disposed of.

July 21, 2017

Mgr/PV

A. SHANKAR NARAYANA, J

