

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.180 of 2013

JUDGMENT:

This Second Appeal is filed against judgment, dated 31.10.2012, in A.S.No.19 of 2010 on the file of the learned VIII-Additional District Judge (Fast Track Court), Rajahmundry, whereby and whereunder he has confirmed the judgment and decree dated 02.12.2009 in O.S.No.209 of 2001 on the file of the IV Additional Junior Civil Judge, Rajahmundry.

The appellants are the plaintiffs, whereas the respondent is the defendant in the suit before the trial Court.

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

The plaintiffs filed the suit seeking declaration of their right and title over an extent of Ac.5.00 cents of land comprised in Sy.Nos.163, 164 and 165 (old), corresponding to R.S.Nos.355, 356 and 357 (new), situated at Mallavram village and also the consequential perpetual injunction against the sole defendant.

During trial in the suit, the 1st plaintiff, besides examining himself as PW.1, has examined six more witnesses as PWs.2 to 7 and marked Exs.A1 to A23, whereas, on behalf of the sole defendant, her husband got examined as DW.1, besides examining two more witnesses as DWs.2 and 3, and Exs.B1 to B3 were marked. But, of course, the

evidence of DW.2 was eschewed on the premise that he did not turn up for cross-examination on the appointed day.

The learned trial Judge recorded the findings on three issues settled for trial. Under the first issue, he has elaborately dealt with the oral and documentary evidence and also, while appreciating the oral evidence let in by the plaintiffs, he has assigned the reasons for disbelieving the evidence of PWs.3 to 7 in paragraph '8' of the judgment. So far as the documentary evidence is concerned, he did not believe Exs.A1 and A4 assigning the reasons and held that they do not satisfy the evidentiary rule.

Concerning Exs.A2 and A3, the learned trial Judge observed that they cannot be given any weight. Touching Exs.A5 and A6, the learned trial Judge has given reasons that Ex.A6 does not contain any seals or signatures of the issuing authority, and with regard to Ex.A5 - receipt, it was observed that the same was brought into existence subsequently, as it contains the date as 16.03.2002, whereas the suit was filed in the year 2001, and, therefore, holding that it does not *prima facie* prove the possession or title of the payee, the learned trial Judge discarded it.

The learned trial Judge also did not believe Ex.A8, the copies of adangals, issued by V.R.O and observed that the V.R.O is not the competent authority as per the relevant Rules. Thus, the learned trial Judge has not given weight to the oral and documentary evidence let in by the plaintiffs. He has also evaluated the evidence let in by DWs.1 and 3 and the document on which reliance was placed happened to be the decree passed in O.S.No.542 of 1994, which was filed by the

defendant seeking perpetual injunction concerning the very same subject matter and she succeeded throughout, and the plaintiffs herein are the defendants in that suit, according to the observations made in paragraph '18' of the judgment of the trial Court. The learned trial Judge has also referred to Ex.A23, the certified copy of the deposition given by the husband of the defendant as PW.1 in E.P.No.808 of 2005, and observed that the same was filed by the plaintiffs for the limited purpose of showing that their possession over the suit schedule property was admitted. After consideration of both, oral and documentary evidence, let in by the respective parties, the trial Court, ultimately, dismissed the suit by judgment dated 02.12.2009.

Aggrieved thereby, the plaintiffs preferred appeal in A.S.No.19 of 2010 before the VIII Additional District Judge (Fast Track Court), Rajahmundry, who, having formulated the points for consideration in paragraph '12', re-appreciated both, oral and documentary evidence, let in by the respective parties and by considering the arguments advanced by the learned counsel for the respective parties and also placing reliance on the decree in O.S.No.542 of 1994 on the file of I-Additional Junior Civil Judge, Rajahmundry, referred to in the judgment of the trial Court, and its effect, held that the plaintiffs failed to prove their title over the schedule property and, accordingly, dismissed the appeal confirming the decree and judgment of the trial Court. Against the same, the present Second Appeal is preferred by the plaintiffs.

Heard Sri V.Eswaraiah Chowdary, learned counsel for the appellants.

Learned counsel for the appellants, of course, would submit that the 3rd appellant died in the year 2014 and no steps have been taken to bring his legal representatives on record.

Be that as it may, the learned counsel tried to impress upon this Court that the appellants have been in possession still, despite recording the concurrent findings and rendering decisions against the plaintiffs, but, however, except touching the factual aspect, there is no question of law that would arise, much less, the substantial question of law. As already discussed in the above, the findings recorded by the trial Court as well as the first appellate Court do not suffer from any patent illegality nor the appellants are able to show that the findings recorded are utterly perverse and, as such, the present Second Appeal deserves to be dismissed.

Accordingly, the Second Appeal is dismissed so far as appellants 1 and 2 are concerned, while the same stands dismissed as abated so far as the 3rd appellant is concerned.

Miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

July 19, 2017
v v