

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

SECON APPEAL No.990 of 2016

JUDGMENT:

The plaintiff, who obtained a decree for permanent injunction from the trial Court, but which got reversed by the first appellate Court, has come up with the above second appeal.

2. Heard Mr. Sai Gangadhar Chamarty, learned counsel for the appellant.

3. The appellant in this appeal filed a suit in O.S.No.210 of 2012 seeking a decree of permanent injunction. His claim was that he purchased the property from one Danisiri Venkat Rao under a registered sale deed, dated 31.07.2009. The appellant impleaded a cooperative bank by name, M/s. Gandhi Cooperative Urban Bank Limited as 1st defendant and one Mr. Jannu Srinivasa Rao, as 2nd defendant in the suit. The 2nd defendant (the 2nd respondent herein) remained ex parte.

4. The Cooperative Urban Bank claimed that the 2nd respondent got the suit schedule property under a registered gift deed dated 28.01.2006 and that the same was mortgaged to the bank, in respect of a loan obtained on 18.04.2008.

5. The trial Court decreed the suit and granted an injunction in favour of the appellant, solely on the basis that as per the evidence on record the appellant was in possession.

6. However, the 1st respondent-Cooperative Urban Bank filed a regular appeal on the file of the II Additional District Court, Vijayawada. Finding that the 2nd respondent had obtained title to the property under a document prior in point of time to the appellant herein and that without resolving the title dispute, a decree of permanent injunction cannot be

granted, the appellate Court reversed the judgment of the trial Court. Hence the plaintiff is before this Court.

7. I find no illegality in the judgment and decree of the first appellate Court. As could be seen from the statement of facts, the appellant claimed title to the property under a registered sale deed, dated 31.07.2009. The 1st respondent-Cooperative Urban Bank claimed to be a mortgagee of the property from the 2nd defendant. The 2nd defendant claimed title under a registered gift deed dated 28.01.2006. The mortgage itself was claimed to have been made on 18.04.2008.

8. In the light of the above facts, if a decree for permanent injunction is granted without deciding the question of ownership, the appellant or the 2nd respondent may succeed by default. Therefore, the appellate Court is right in holding that the appropriate remedy for the appellant is to seek declaration of title. Hence, the Second Appeal is dismissed.

9. As sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

20th January, 2017
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

SECON APPEAL No.990 of 2016



Date: 20-01-2017

Js.