

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.402 of 2015

JUDGMENT:

This appeal is filed challenging the judgment and decree dated 22.01.2015 in A.S.No.30 of 2012 on the file of the Court of V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, wherein and whereby the judgment and decree dated 06.05.2010 in O.S.No.901 of 2007 on the file of the Court of I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, decreeing the suit filed for declaration, was confirmed.

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

3. The facts leading to filing of the second appeal are briefly as follows:

The plaintiff is the absolute owner and possessor of plot Nos.27, 28 and 51 total admeasuring 850 sq. yards in Sy.No.142 and 154 of Kuntloor village, Hayathnagar Mandal, Ranga Reddy District. The plaintiff got the above referred plots from her father Sri P.Sathi Reddy through a registered gift settlement deed vide document No.5607 of 2007 dated 26.07.2000, ever since the plaintiff has been in possession and enjoyment of the suit schedule property. Originally, Smt.Gajji Narasamma, W/o.G.Swamy was the owner of the plots No.27,

28 and 51 total admeasuring 850 sq. yards in Sy.Nos.142 and 154 of Kuntloor village. The said Narasamma sold away the plots Nos.28 and 51 admeasuring 550 sq. yards to Smt.Boyina Lakshmi through a registered sale deed vide document No.1266 of 1985 dated 02.02.1985. Narasamma also sold away plot No.27 admeasuring 300 sq. yards to Boyina Lakshmi through a registered sale deed vide document No.13266 of 1985 dated 17.10.1985. Smt. Boyina Lakshmi in turn sold the above referred plots to M/s.Kanakateegala Chit Funds Private Limited, represented by its Chairman, Sri T.Bhoja Reddy through a registered sale deed dated 19.11.1988. The said chit fund company sold away the above said plots to the father of the plaintiff Sri P.Sathi Reddy through a registered sale deed vide document No.2219 of 1998 dated 22.05.1998. The defendant is no way connected with the suit schedule property. On 12.03.2007, the defendant along with her husband came to the suit plot and tried to dig pits in order to erect stone pillars. The defendant has no right whatsoever in the suit schedule property. Hence, the plaintiff constrained to file a suit for declaration and consequential perpetual injunction.

4. Defendant filed written statement admitting that one Gajji Narasamma was the original owner of the land in Sy.Nos.142, 143, 151 and 154 of Kuntloor village along with Smt.Kolan Laxmamma and Gurram Jangamma. Subsequently, they have divided the land among them orally. Gajji Narasamma has got the land admeasuring Ac.14.07 guntas in Sy.Nos.142 and

Ac.5.39 guntas in Sy.No.154. The said Narasamma converted the land into house plots in the year 1987 and sold away plot No.27 admeasuring 300 square yards in favour of Sri B.Papi Reddy through a registered sale deed vide document No.9449 of 1987 dated 21.07.1987 and delivered possession of the same. The said Papireddy erected the stone khadies as fencing around the plot No.27. The said Papireddy sold plot No.27 to the defendant through his GPA holder under a registered sale deed in the year 2002. The plaintiff was never in possession and enjoyment of the plaint schedule property. The defendant perfected her title even by way of adverse possession. 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 the owner and possessor of the suit schedule property?
2. Whether the defendant tried to dispossess the plaintiff from the suit schedule property on 12.03.2007 and on 24.03.2007?
3. Whether the plaintiff lost her title and possession over the suit schedule property by law of prescription?
4. Whether the plaintiff is entitled for declaration as prayed for?
5. Whether the plaintiff is entitled for perpetual injunction as prayed for?
6. To what relief?

6. During the course of trial, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A1 to A10 were marked. On behalf of the defendant, D.W.1 was examined and Exs.B1 and B2 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff is the owner of the suit schedule property and decreed the suit granting relief of declaration and consequential perpetual injunction in favour of the plaintiff. Feeling aggrieved by the judgment and decree dated 06.05.2010 in O.S.No.901 of 2007, the defendant preferred A.S.No.30 of 2012 on the file of the Court of V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar. The first appellate Court after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the plaintiff is entitled for the relief of declaration and perpetual injunction and consequently dismissed the appeal concurring with the findings recorded by the trial Court. Hence, the unsuccessful defendant preferred the present second appeal.

8. Heard the learned counsel for the appellant-defendant and perused the material available on record.

9. The question of law that arises for consideration in this appeal is as follows:

“Whether the findings recorded by the Courts below are perverse?”

10. The following admitted facts can be culled out from the pleadings.

Originally, one Smt.Gajji Narasamma, W/o.G.Swamy was the owner of the plots Nos.27, 28 and 51 in Sy.Nos.142 and 154

of Kuntloor village. The said Narsamma sold plot Nos.28 and 51 in favour of Smt.Boyina Lakshmi on 02.02.1985 and plot No.27 admeasuring 300 sq. yards on 17.10.1985 under originals of Exs.A4 and A5 registered sale deeds respectively. Later, Smt.Boyina Lakshmi sold plot Nos.27, 28 and 51 in favour of M/s.Kanakateegala Chit Fund Company under original of Ex.A3 sale deed. The father of the plaintiff purchased plot Nos.27, 28 and 51 from the said chit fund company under original of Ex.A2 registered sale deed dated 22.05.1998. The father of the plaintiff executed a gift deed bequeathing suit schedule property in favour of the plaintiff on 26.07.2000 under the original of Ex.A1.

11. The case of the plaintiff is that she has been in possession and enjoyment of the suit schedule property along with some other property by virtue of Ex.A1 gift deed. The case of the defendant is that her vendor by name Papireddy purchased plot No.27 from Gajji Narsamma under registered sale deed dated 21.07.1987 original of Ex.B2. The defendant purchased the suit schedule property from the said Papireddy under original of Ex.B1 registered sale deed dated 09.04.2000.

12. The entire controversy revolves around plot No.27 in Survey No.154 of Kuntloor village.

13. The plaintiff filed a suit for declaration that she is the owner of the plaint schedule property and consequential perpetual injunction. The defendant claiming that she is the

owner of the suit schedule property basing on originals of Exs.B1 and B2 sale deeds. It is not in dispute that originally plot Nos.27, 28 and 51 belong to Gajji Narsamma. A perusal of Exs.A4 and A5 clearly reveal G.Narsamma sold plot Nos.27, 28 and 51 under originals of registered sale deeds to one Boyina Lakshmi in the year 1985. The defendant is claiming the suit schedule property basing on Ex.B2 registered sale deed alleged to have been executed by Gajji Narsamma in favour of Papireddy. It appears that G.Narsamma after execution of sale deed in favour of Boyina Lakshmi in the year 1985 executed a sale deed in favour of Papireddy on 21.07.1987. The material placed before the Court clinchingly establishes that as on 21.07.1987 G.Narsamma was not having any right whatsoever in plot No.27. The defendant purchased plot No.27 on 09.04.2000 under registered sale deed Ex.B1 from Papireddy. When the vendor of the defendant was not having any right whatsoever in the suit schedule property, he cannot transfer title in favour of the defendant.

14. The defendant has taken a specific plea that she perfected title over the suit schedule property even by way of adverse possession. A person, who has been in possession and enjoyment of the property continuously for a period of 12 years by setting up hostile title to the real owner and to the knowledge of one and all including the original owner, can claim adverse possession. On one hand, the defendant claiming title over the suit schedule property by virtue of Exs.B1 and B2. On the other

hand, the defendant claiming title over the suit schedule property by way of adverse possession. The defendant can take any number of inconsistent pleas, but not entitled to take particularly self-destructive pleas. Having regard to the facts and circumstances of the case, the defendant is not entitled to take a plea of adverse possession. The defendant purchased the property in the year 2000, whereas, the suit was filed in the year 2007. In such circumstances, the stand of adverse possession as set up by the defendant is not sustainable either on facts or in law.

15. On the other hand, the plaintiff by examining P.Ws.1 and 2 and marking Exs./A1 to A10 clearly establish that her vendors as well as her father purchased the property from the rightful owner. A person, who purchased the property from a rightful owner, is entitled for relief of declaration. In the instant case, the plaintiff by examining P.Ws.1 and 2 and marking Exs.A1 to A10 clinchingly established that she is the owner of plaint schedule property. Therefore, the plaintiff is entitled for the relief of declaration and that she is the absolute owner of the suit schedule property. Material available on record clinchingly established that the plaintiff was in possession of suit schedule property as on the date of filing of the suit. In such circumstances, the defendant is not entitled to interfere with the possession of the plaintiff over the suit schedule property.

16. The trial Court considered the oral testimony of P.Ws.1 and 2 and Exs.A1 to A10 in right perspective and arrived at a

right conclusion that the plaintiff is entitled for the relief of declaration and consequential perpetual injunction. The first appellate Court without being influenced by the findings recorded by the Courts below arrived at a conclusion that the plaintiff is the absolute owner of the suit schedule property. Therefore, she is entitled for the relief of declaration and consequential perpetual injunction. The findings recorded by the Courts below are supported by oral and documentary evidence, which is legally admissible evidence. The Courts below have assigned reasons much less cogent and valid reasons to their findings. In such circumstances, this Court is 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.

17. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, while dealing with the scope of Section 100 of CPC, 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. ...

¹ (2010) 13 SCC 216

18. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that there is no question of law much less substantial question of law involved in this appeal.

19. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

11th December, 2017
Rns

T.SUNIL CHOWDARY, J

