

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

S.A.No.767 of 2017

Date : 11-08-2017

Between:

Urukuti Appa Rao

.. Appellant

and

Poranki Venkata Krishnamma and others

.. Respondents

Counsel for appellant : Sri G. Rama Gopal

Counsel for respondent No.1: Sri C. Hanumantha Rayudu



The Court made the following:

JUDGMENT:

This Second Appeal arises against the concurrent findings of fact rendered in Judgment dated 19-8-2009 in O.S.No.272 of 2005 on the file of the learned Senior Civil Judge, Gajuwaka, Visakhapatnam District and Judgment dated 2-4-2014 in A.S.No.158 of 2010 on the file of the learned XIII Additional District Judge, Visakhapatnam at Gajuwaka.

Respondent No.1 filed the aforementioned suit for permanent injunction restraining the appellant from interfering with her peaceful possession of the property, shown as “ABCD” in the plaint schedule. It is her pleaded case that she has purchased the suit schedule property under Ex.A-1 registered sale deed dated 23-1-1993 and that since then she has been in possession of the property. The defendants, including the appellant herein, resisted the suit and pleaded that while Ex.A-1 sale deed based on which the suit was filed, pertains to the property in Sy.Nos.34/8 and 34/9, respondent No.1/plaintiff has been claiming the property belonging to the appellant and situate in Sy.No.34/7. Based on the respective pleadings of the parties, the trial Court framed the following issues :

1. Whether the plaintiff has been in lawful possession and enjoyment of the suit schedule property ?
2. Whether the survey numbers mentioned for the schedule property and the boundaries are correct ?
3. Whether the plaintiff is entitled for the permanent injunction as prayed for ?
4. To what relief?

On behalf of respondent No.1/plaintiff, she has examined herself as PW-1 and also examined PW-2 and got Exs.A-1 and A-2 marked. On behalf of the defendants, the appellant examined himself as PW-1 and got Exs.B-1

to B-7 marked. On appreciation of the oral and documentary evidence, the trial Court has decreed the suit. On reappraisal of the evidence on record, the lower appellate Court has confirmed the decree of the trial Court. Feeling aggrieved by both these Judgments, the appellant/defendant No.2 filed this Second Appeal.

At the hearing, Sri G. Rama Gopal, learned Counsel for the appellant argued with conviction that both the Courts below have misdirected themselves in accepting the plea of respondent No.1/plaintiff that the suit property is situate in Sy.No.34/8 and 34/9, whereas it is actually situate in Sy.No.34/7. The issue as to in which of these survey numbers the suit schedule property lies, falls in the realm of a seriously disputed question of fact. Based on appreciation of evidence, both the Courts below have rendered a finding that respondent No.1 was able to prove that he is in possession of the property described in Ex.A-1 sale deed. Though the defendants have claimed that the suit schedule property is situate in Sy.No.34/7, they did not get the property localised by a Licenced Surveyor and produce any evidence in that regard. In the absence of any such evidence coming-forth from the defendants, the Courts below have upheld the plea of respondent No.1/plaintiff based on the evidence available on record.

The law is well settled that appreciation of evidence does not fall in the realm of substantial questions of law and even if the evidence is not properly appreciated by the Courts below, this Court, in exercise of its jurisdiction under Section 100 of the Code of Civil Procedure, 1908 would not interfere with the conclusions drawn by the Courts below by such

appreciation of evidence. As the appellant failed to raise any substantial question of law, the Second Appeal must fail and the same is accordingly dismissed.

Justice C.V. Nagarjuna Reddy

Date : 11-08-2017

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