

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.868 of 2016

JUDGMENT:

This second appeal is filed by the unsuccessful plaintiff assailing the judgment and decree dated 07.06.2016 in A.S.No.133 of 2012 on the file of the Court of Special Sessions Judge for trial of Cases under SC/ST (POA) Act 1989-cum-VII Additional District & Sessions Judge, at L.B.Nagar, Ranga Reddy District, wherein whereby the decree and judgment dated 22.03.2012 in O.S.No.161 of 2003 passed by the II Additional Junior Civil Judge, Ranga Reddy District, at L.B.Nagar, dismissing the suit filed by the plaintiff for perpetual injunction, was confirmed,.

2. Heard the learned counsel for the appellant and perused the material available on record.

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

4. The facts leading to filing of the second appeal are briefly as follows: The plaintiff purchased the suit schedule property in plot No.606/B in an extent of 200 square yards in Sy.Nos.45 to 50, Peerjadiguda village, Uppal Revenue Mandal, R.R.District from one M.Lakshamma and others under a registered sale deed dated 09.04.1999. The said Lakshamma (plaintiff's vendor) purchased the said property from Priya Co-operative Housing Society Ltd., in the year 1982. From the date of purchase, the plaintiff has been in possession and enjoyment of the suit schedule property. It is the further case of the plaintiff that the defendants herein without any

right whatsoever interfering with his possession. Having no other alternative, the plaintiff filed the suit O.S.No.161 of 2003 for perpetual injunction restraining the defendants not to interfere with the suit schedule property.

5. The second defendant filed written statement denying the averments made in the plaint *inter alia* contending that there is no vacant site in plot No.606/B admeasuring 200 sq. yards in Sy.No.45-50 of Peerzadiguda village. He also denied the title of the plaintiff. The suit schedule property was demarcated for the purpose of public amenities like park, temple and play ground etc. The local people filed Writ Petition No.2315 of 1999 before this Court, wherein this Court directed the concerned authorities to preserve the suit schedule property for the purpose of public utility. The first defendant is the Sarpanch and the second defendant is the Secretary of the Gram Panchayat. The first defendant filed memo adopting the written statement filed by D2.

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is in lawful possession of suit property?
2. Whether the plaintiff is entitled for perpetual injunction as prayed for?
3. To what relief?

7. To substantiate the case, the plaintiff examined himself as P.W.1 and got marked Exs.A1 to A17. P.W.2 was examined to prove that the plaintiff was in possession of the suit schedule property. To demolish the case of the plaintiff, the second defendant examined himself as D.W.1 and got marked Exs.B1 to B5. D.W.2 was examined to prove the stand of the defendants.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the suit schedule property was not in existence. The trial Court further held that the plaintiff was not in possession of the suit schedule property as on the date of filing of the suit and dismissed the suit. The unsuccessful plaintiff being aggrieved by the judgment and decree dated 22.03.2012, preferred the appeal in A.S.No.133 of 2012. The first appellate Court, after reappraising the oral and documentary evidence afresh, arrived at a conclusion that the plaintiff was not in possession and enjoyment of the suit schedule property, therefore, he is not entitled for equitable relief of perpetual injunction and dismissed the appeal. Hence, the present second appeal by the unsuccessful plaintiff.

9. Sri V.Venugopala Rao, learned counsel for the appellant strenuously submitted that the findings recorded by the Courts below are not based on any evidence much less legally admissible evidence. He further submitted that the Courts below ought not to have discard Ex.A6 lay out plan filed by the plaintiff. The substantial question of law urged by the learned counsel for the appellant is as follows:

“Whether the Courts below are justified in discarding Ex.A6 lay out plan, which was unrebutted by the defendants?”

10. The material available on record reveals that the plaintiff purchased an extent of 200 square yards in Sy.Nos.45-50 of Peerjadiguda village, from one M.Lakshamma and others under a registered sale deed dated 09.04.1999. The vendors of the plaintiff have purchased the suit schedule property from Priya Co-operative

Housing Society in the year 1982. The case of the plaintiff is that the defendants, who are the Sarpanch and Secretary of the Gram Panchayat are interfering with the suit schedule property without any right whatsoever. As rightly pointed out by the learned counsel for the appellant, the defendants are not disputing the sale deeds i.e. Ex.A1 and A8. In a suit for perpetual injunction, a duty casts upon the plaintiff that he has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. Once the plaintiff establishes that he was in possession of the suit schedule property as on the date of filing of the suit, then the onus of proof shifts to the defendants to prove that they are in possession of the property in question.

11. In a suit for perpetual injunction, the Court has to consider that whether the plaintiff was in possession of the property as on the date of filing of the suit or not. To substantiate the case, the plaintiff mainly relied upon Ex.A6 lay out plan. As per Ex.A6 lay out plan dated 08.07.1979, plot No.606/B is in existence. A perusal of the record reveals that the locality people approached this Court and filed writ petition No.2315/1999 alleging that Survey Nos.45 to 50 were demarcated for public utility purpose. This Court allowed the said writ petition. The trial Court arrived at a conclusion that the suit schedule property was not in existence as on the date of filing of the suit.

12. A perusal of the record reveals that Ex.A7 lay out was marked in the cross-examination of D.W.1. The learned counsel for the appellant submitted that Ex.A7 was not filed by the plaintiff. It is needless to say that the plaintiff can mark his

documents in the cross-examination of the defendants' side witnesses also. A perusal of the record reveals that the plaintiff got marked Ex.A7 in the cross-examination of D.W.1. I am unable to accede to the contention of the learned counsel for the appellant that Ex.A7 was not marked at the instance of the plaintiff.

13. In order to appreciate the contention of the plaintiff, the first appellate Court considered the recitals of Ex.A7 in Para 20 of its judgment. The first appellate Court arrived at a conclusion Ex.A7 does not contain the endorsement that it was verified with the original. The seal and signature on Ex.A7 are not visible, therefore, the appellate Court discarded Ex.A7. It is needless to say that a person, who seeks equitable relief, must come to Court with clean hands by placing all relevant documents. It is a settled principle of law that the plaintiff is not entitled to take inconsistent pleas more particularly mutually self-destructive pleas. As per Ex.A7 the suit schedule property was demarcated for the purpose of public utility. As per the finding of the trial Court, the suit schedule property is in existence as per Ex.A6 lay out plan. The trial Court also made an observation that the suit schedule property was not in existence as per lay out Ex.A7. These two documents are filed by the plaintiff himself. The documents filed by the plaintiff create any amount of doubt with regard to the existence of the suit schedule property. The Court cannot place reliance on one document filed by the plaintiff and discard the other document, which is not in his favour. The Court has to consider the totality of the facts and circumstances of the case in order to arrive just and reasonable conclusion.

14. As rightly pointed out by the learned counsel for the appellant, if the findings recorded by the Courts below are perverse, certainly this Court can interfere while exercising jurisdiction under Section 100 CPC. A finding of the Court can be termed as perverse if the same is based on no evidence or based on evidence, which is not legally admissible. Let me consider whether the findings recorded by the Courts below are based on any evidence. Both Courts concurrently held that the plaintiff was not in possession of the property in view of discrepancy in Exs.A6 and A7. Both documents were filed by the plaintiff. If one document is taken into consideration, the suit schedule property was not in existence. As observed earlier, the plaintiff has to establish that as on the date of filing of the suit, he was in possession of the property. Whether the plaintiff was in possession of the property as on the date of filing of the suit or not is purely a question of fact. The first appellant Court is the finding fact final Court. The Courts below rightly considered the legality or otherwise of Exs.A6 and A7. The findings recorded by the Courts below are supported by oral and documentary evidence available on record. In such circumstances, I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the Courts below are perverse. Both the Courts concurrently held that the plaintiff was not in possession of the suit schedule property. This Court shall not lightly interfere with the concurrent findings of fact recorded by the Courts below.

15. 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. Thus, it is evident from the above that the right to appeal is a creation of statute and it cannot be created by acquiescence of the parties or by the order of the court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a court or authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance with the conditions mentioned in the provision that creates it. Therefore, the court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. 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. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same. (Vide *Santosh Hazari v. Purshottam Tiwari*, (2001) 3 SCC 179; *Sarjas Rai v. Bakshi Inderjit Singh*, (2005) 1 SCC 598; *Manicka Poosali v. Anjalai Ammal*, (2005) 10 SCC 38; *Sugani v. Rameshwar Das*, (2006) 11 SCC 587; *Hero Vinoth v. Seshammal*, (2006) 5 SCC 545; *P. Chandrasekharan v. S. Kanakarajan*, (2007) 5 SCC 669; *Kashmir Singh v. Harnam Singh*, (2008) 12 SCC 796; *V. Ramaswamy v. Ramachandran*, (2009) 14 SCC 216 and *Bhag Singh v. Jaskirat Singh*, (2010) 2 SCC 250.)

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the point raised by the learned counsel for the plaintiff will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law in this appeal.

¹ (2010) 13 SCC 216

17. 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.

T.SUNIL CHOWDARY, J

31st October, 2017
Rns

