

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.217 OF 2000

JUDGMENT:

This Second Appeal is filed by the defendant assailing the decree and judgment dated 17.01.2000 in A.S.No.20 of 1998 on the file of the Court of the Senior Civil Judge, Madanapalle, wherein and whereby the decree and judgment dated 16.12.1991 in O.S.No.135 of 1983 on the file of the Court of the Principal District Munsif, Madanapalle, was confirmed insofar as granting of perpetual injunction in respect of 'A' schedule property and granting mandatory injunction in respect of suit 'B' schedule property while allowing the Cross-Objections filed by the plaintiffs.

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

3. The averments made in the plaint are briefly as follows: Originally the suit schedule property along with some other property belonged to Kanala Seetharamanna, Kanala Venkataswamy and Kanala Obanna. Kanala Seetharamanna along with his son i.e., Kanala Ramaiah, Kanala Venkataswamy and the sons of Kanala Obanna have sold the plaint schedule property with specific boundaries and measurements to one Nakka Venkatramana under a registered sale deed dated 24.01.1941 and delivered the possession of the same to him. Nakka Venkatramana also perfected his right and title over the plaint schedule property even by way of adverse possession. On 26.02.1982 the said Nakka Venkatramana has sold the plaint schedule property to the plaintiffs under two separate registered sale deeds for a valuable

consideration and delivered possession of the property to them on the same day. Ever since, the plaintiffs have been in possession and enjoyment of the same. The plaint schedule property has been described as 'ABCD' in the plaint sketch. The defendant is entitled to the plot shown as 'EFGH' in the plaint sketch, which is situated on the west of the plaint schedule. The said plot along with some other extent originally belonged to his mother Degala Gangulamma and one Degala Ademma. They had sold the property to one Patan Peeran under a registered sale deed about 19 years ago. The said Patan Peeran in turn sold the same to one M.Mohan about 14 years ago. In all the above sale deeds, the plaint schedule mentioned property is shown as the eastern boundary. The defendant has purchased the plot an extent of Ac.0.05 cents from the said Mohan about five years ago. The defendant is aware that the plaintiffs' vendor Nakka Venkatramana alone entitled to the plaint schedule mentioned property exclusively. The total extent of the plot 'EFGH' is Ac.0.05 cents. The defendant has no right whatsoever in the plaint schedule property. The plaintiffs are residing in two different villages. Taking advantage of the same, the defendant has highhandedly encroached an area of 206.25 square feet, which is part and parcel of 'B' schedule property, and made constructions after institution of the suit thereby denied the plaintiffs right and title to the extent of Ac.0.05 cents. The second plaintiff has sold his half share in the plaint schedule property to the third plaintiff under a registered sale deed dated 11.02.1986 for a valuable consideration. The plaintiffs 1 and 3 are entitled to plaint 'A' and 'B' schedule properties. Hence, the suit.

4. The defendant filed written statement denying all the averments made in the plaint *inter alia* contending that the full extent of the suit survey number is Ac.1.95 cents and it was originally owned by three sets of Kanala family people and each set got 1/3rd share in it. Kanala Chinna Venkataswamy and Kanala Seetharamana got 1/3rd share, Kanala Siddappa, Subbaiah, Narappa and Peddanna got 1/3rd share and the remaining 1/3rd share got by Degala Gangulamma and Ademma. The plaintiffs are now claiming 1/3rd share, which originally belonged to Chinna Venkataswamy and his brothers. The property comprised in the suit survey number was divided among the above said joint owners long ago and in that division, the eastern plot of Ac.0.60 cents was allotted to Kanala Chinna Venkataswamy and his brothers and the western plot of Ac.0.70 cents was allotted to Kanala Siddappa and his brothers. The middle plot of Ac.0.65 cents was allotted towards the share of Degala Gangulamma and Ademma. The said division had become final and the parties have been in separate possession and enjoyment of the same and had perfected their right and title over the said plot by adverse possession. The allegation that the plaintiffs had been in possession of plaint schedule property is not correct and they are entitled only to an extent of Ac.0.60 cents. This defendant had purchased an extent of Ac.0.05 cents in the suit survey number for a valid consideration under a registered sale deed dated 23.05.1977 from one Mohan. He had also purchased another extent of Ac.0.05 cents from his mother Gangulamma for a valid consideration under a registered sale deed dated 12.11.1981. Ademma and Gangulamma have retained Ac.0.02 cents having disposed of the remaining extent of Ac.0.63

cents by way of sale deeds. Hence, the suit for mere injunction without establishing their right and title to the disputed portion is not maintainable. Hence, the suit may be dismissed.

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

1. Whether the plaintiff is entitled to the injunction as prayed for?
2. To what relief?

Additional issues:

1. Whether the plaintiff is entitled to declaration of title in respect of the plaint schedule property?
2. Whether the plaintiff is entitled to mandatory injunction as prayed for?
3. Whether the valuation of the property given is not correct?

6. Before the trial Court, on behalf of the plaintiffs, PWs.1 to 3 were examined and Exs.A.1 to A.15 were marked. On behalf of the defendant, DWs.1 and 2 were examined and Exs.B.1 to B.12 were marked.

7. After considering the oral, documentary evidence and other material available on record, the trial Court came to a conclusion that the plaintiffs are entitled for the relief of declaration and declined to grant the relief of mandatory injunction. Feeling aggrieved by the decree and judgment of the trial Court, the defendant preferred A.S.No.20 of 1998 on the file of the Court of the Senior Civil Judge, Madanapalle. The plaintiffs preferred cross-objections to the extent of declining to grant the relief of mandatory injunction. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the plaintiffs are entitled for

the relief of declaration as well as mandatory injunction. Hence, the defendant preferred the present second appeal.

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

9. The questions of law that urged by the learned counsel for the appellant are as follows:

1. Whether the appellate Court is justified in granting mandatory injunction in favour of the plaintiffs overlooking the established principles of law with regard to the interpretation of documents that boundaries prevail over extents? and
2. Whether the findings recorded by the Courts below are perverse?

10. Point Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

11. It is not in dispute that an extent of Ac.1.95 cents in Survey No.3 of Ponnutipalem Revenue Village, Madanapalle Taluq, Chittoor District originally belonged to Kanala family consisting of three groups of sharers. The successors of the above three groups got Ac.0.65 cents each. Degala Gangulamma and Ademma got Ac.0.65 cents. Degala Gangulamma is none other than mother of the defendant. The mother of the defendant and Ademma sold their share to different persons under different sale deeds. One Nakka Venkatramana purchased Ac.0.65 cents from the original parties under a registered sale deed dated 24.01.1941 (Ex.A.2). Plaintiff Nos.1 and 2 purchased Ac.0.65 cents of land from Nakka Venkatramana under registered sale deeds dated 26.02.1982,

Exs.A.3 and A.4. It is the case of the plaintiffs that they are the owners of an extent of Ac.0.65 cents of land in Survey No.3 of Ponnutipalem Revenue Village, Madanapalle Taluq, Chittoor District, which is shown as plaint 'A' schedule property. It is the further case of the plaintiffs that the defendant encroached 206.25 square feet of their vacant site, which is shown as 'B' schedule property. The trial Court, after taking into consideration the oral testimony of the witnesses and Exs.A.1 to A.15 and Exs.B.1 to B.12, came to a conclusion that the plaintiffs are entitled for the relief of declaration that they are the title holders of an extent of Ac.0.65 cents of land i.e., plaint 'A' schedule property. The first appellate Court, after reappraising the oral and documentary evidence, concurred with the finding of the trial Court that the plaintiffs are entitled for the relief of declaration in respect of the plaint schedule 'A' property.

12. The trial Court dismissed the suit insofar as the relief of mandatory injunction in respect of plaint 'B' schedule property is concerned. As observed earlier, the plaintiffs have preferred cross-objections challenging the decree and judgment of the trial Court to the extent of dismissing the suit in respect of the mandatory injunction. It is not in dispute that Gangulamma and Ademma got an extent of Ac.0.65 cents in the partition. The said Gangulamma and Ademma sold to an extent of Ac.0.68 cents under Exs.A.8 to A.15 to different persons. Originally Gangulamma and Ademma got Ac.0.65 cents, whereas they sold an extent of Ac.0.68 cents. This itself clearly indicates that Gangulamma and Ademma sold more extent of the property than they originally got in the partition.

13. It is the case of the defendant that he purchased an extent of Ac.0.05 cents under Ex.B.1 sale deed from one Mohan. He had also purchased another extent of Ac.0.05 cents from his mother Gangulamma under Ex.B.2. The Courts below upheld the contention of defendant that he purchased Ac.0.05 cents under Ex.B.1 sale deed. The defendant is claiming an extent of Ac.0.10 cents under Exs.B.1 and B.2. Ex.B.2 is the gift deed alleged to have been executed by the mother of the defendant in his favour to an extent of Ac.0.05 cents. The trial Court treated Ex.B.2 as sale deed. The trial Court has not placed reliance on Ex.B.2 as the defendant did not examine any person to prove the recitals of the same, whereas the first appellate Court treated Ex.B.2 as gift deed. The Courts below entertained a doubt how Gangulamma owned an extent of Ac.0.05 cents after executing sale deeds by her and Ademma in favour of different persons. It is a settled principle of law that a gift deed is an attestable document. It is needless to say that a party, who is placing reliance on gift deed, has to examine at least one of the attestors. In the instant case, the defendant did not choose to examine one of the attestors of Ex.B.2 as contemplated under Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act. In view of non-examination of one of the attestors, the Courts below discarded Ex.B.2. Once the Court discards Ex.B.2, the defendant was having only an extent of Ac.0.05 cents in view of Ex.B.1 sale deed. The defendant failed to establish that he is entitled to an extent of Ac.0.05 cents, which is part and parcel of the suit schedule property. The material placed before the Court establishes that the defendant is not entitled to claim an extent of

Ac.0.05 cents in the suit schedule property by pressing into service Ex.B.2 gift deed, which is not admissible under law. As observed earlier, the plaintiffs clinchingly established that they are the owners of an extent of Ac.0.65 cents of land i.e., plaint 'A' schedule property. Plaint 'B' schedule is an extent of Ac.0.05 cents, which is part and parcel of plaint 'A' schedule property. During pendency of the suit, the defendant encroached the plaint 'B' schedule property and made constructions. A perusal of Ex.A.6 clinchingly establishes that the defendant made constructions in the plaint 'B' schedule property without obtaining necessary permission from the competent authority i.e., Madanapalle Municipality. It is not in dispute that the property fell to the share of mother of the defendant and Ademma is on the west of the plaint schedule property. The defendant encroached the western portion of the plaint schedule property. The trial Court was confused with regard to the sketch plan and rejected the relief of mandatory injunction. On the other hand, the first appellate Court has rightly considered the plan and other material available on record and came to a conclusion that the defendant encroached an extent of Ac.0.05 cents. During pendency of the appeal, the Advocate Commissioner, who was appointed during pendency of the suit, was again directed to revisit the suit schedule property and submit his report. Even as per the Advocate Commissioner's report, the defendant has encroached an extent of Ac.0.05 cents of land i.e., plaint 'B' schedule property, which belongs to the plaintiffs. Once the Court grants the relief of declaration in favour of the plaintiff, automatically he is entitled for other consequential reliefs. It is needless to say that a relief of mandatory injunction or perpetual

injunction is a consequential relief in a suit for declaration. The trial Court, having granted the relief of declaration in favour of plaintiffs, ought to have granted the relief of mandatory injunction. The trial Court committed an error while not granting the relief of mandatory injunction having come to a conclusion that the plaintiffs are the owners of plaint 'A' schedule property. The Courts below have considered the documents in right perspective and arrived at a just and reasonable conclusion. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. Therefore, I am unable to accede to the contention of the learned counsel for the appellant that the trial Court misconstrued the documents and the findings recorded by the Courts below are perverse.

14. In **Municipal Committee, Hoshiarpur v. Punjab SEB¹**, while dealing with the scope of Section 100 of C.P.C., 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."

15. 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 questions of law urged by the learned counsel for the appellant will not fall within the ambit of Section

¹ (2010) 13 SCC 216

100 of C.P.C. There is no question of law much less substantial question of law is involved in this appeal. Hence, the appeal is liable to be dismissed.

16. In the result, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 30.11.2017
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