

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.765 of 2012

JUDGMENT:

This appeal is filed by the defendant assailing the judgment and decree dated 19.02.2010 in A.S.No.272 of 2009 on the file of the Court of III Additional Senior Civil Judge, at Kakinada, wherein whereby the judgment and decree dated 11.09.2008 in O.S.No.1007 of 2001 on the file of the Court of I Additional Junior Civil Judge, Kakinada, granting perpetual injunction in favour of the plaintiff, 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: Plaintiff is the owner of an extent of Ac.2.25 cents in Sy.No.220/4B of Indrapalem village, now merged in Kakinada municipality. The plaintiff obtained permission from the concerned municipality for conversion of the suit schedule property and converted the entire land into plots. The defendant claims that the plaintiff executed an agreement of sale dated 11.11.1999 in her favour in respect of suit schedule property and got filed a caveat against the plaintiff. The alleged agreement of sale is a fabricated one. The plaintiff issued a reply notice dated 05.08.2001 mentioning all the correct particulars. The defendant is proclaiming that she will trespass

into plot No.1 i.e., the suit schedule property. Hence, the plaintiff filed the suit for perpetual injunction.

4. The defendant filed written statement admitting that the plaintiff is the absolute owner of an extent of Ac.2.25 cents in Sy.No.220/4B of Indrapalem village, *inter alia* contending that the plaintiff executed an agreement of sale dated 11.11.1999 in favour of the defendant and delivered the possession of the suit schedule property. The defendant has been in possession and enjoyment of the suit schedule property by virtue of an agreement of sale, 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 entitled to the relief of permanent injunction, as prayed for?
2. To what relief?

6. To substantiate the case, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of the defendant, D.Ws.1 to 4 were examined and Exs.B1 to B6 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 was in possession of the suit schedule property as on the date of filing of the suit and decreed the suit by granting perpetual injunction. Feeling aggrieved by the judgment and decree dated 11.09.2008 in O.S.No.1007 of 2001, the defendant preferred A.S.No.272 of 2009 on the file of

the Court of III Additional Senior Civil Judge, Kakinada. The first appellate Court after reappraising the oral, documentary evidence and other material available on record, concurred with the finding of the trial Court that the plaintiff was in possession and enjoyment of the suit schedule property as on the date of filing of the suit and consequently dismissed the appeal. Hence, the present second appeal by the defendant.

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

9. The questions of law that arise for consideration in this appeal are as follows:

“1. Whether the Courts below are justified in disbelieving Ex.B6 agreement of sale?”

2. Whether the Courts below are justified in granting perpetual injunction in favour of the plaintiff even though she failed to establish her case?

10. Both the questions are intertwined to each other, this Court is inclined to answer both the questions simultaneously to avoid recapitulation of facts and evidence.

11. Plaintiff is the owner of an extent of Ac.2.25 cents in Sy.No.220/4B of Indrapalem village. Plaintiff purchased the plaint schedule property from one Degala Appala China Pothuraju under a registered sale deed dated 29.09.1976. The plaintiff converted the entire agricultural land into plots by

obtaining approval from the concerned authorities on 13.08.2007(Ex.A3). Ex.A4 is the endorsement of the Town Planning Officer, Kakinada Municipality dated 14.09.1998. The defendant herself admitted that the plaintiff is the owner of an extent of Ac.2.25 cents in Sy.No.220/4B of Indrapalem village which includes the plaint schedule property. The entire controversy revolves around Ex.B6 agreement of sale dated 11.11.1999. It is the case of the defendant that the plaintiff executed an agreement of sale(Ex.B6) on 11.11.1999 in favour of the defendant in respect of the suit schedule property. It is the further case of the defendant that the plaintiff delivered the possession of the suit schedule property under Ex.B6. The agreement of sale coupled with delivery of possession requires registration with effect from 01.04.1999. Admittedly, Ex.B6 is not a registered document. Learned counsel for the appellant-defendant strenuously submitted that Ex.B6 can be looked into for collateral purpose.

12. The trial Court compared the admitted signatures of the plaintiff with her alleged signature on Ex.B6 by invoking Section 73 of Indian Evidence Act. The trial Court categorically held that the admitted signatures of the plaintiff are different to that of the disputed signatures on Ex.B6. In the cross-examination, D.W.1 deposed that during the pendency of the suit, the plaintiff demolished the thatched house. Therefore, Exs.B1 to B5 photoes are no way helpful to establish that by the time of filing of the suit, thatched house was in existence in the suit schedule

property. D.W.2 in the cross-examination in unequivocal terms deposed that Ex.B6 does not bear the signature of the plaintiff. The defendant failed to prove that Ex.B6 was executed by the plaintiff. The defendant miserably failed to prove that she constructed the thatched house in the suit schedule property. The defendant having admitted the title of the plaintiff, failed to prove that the plaintiff delivered the possession of suit schedule property. Once Ex.B6 is discarded, nothing remains on record to establish that the defendant was in possession of the property as on the date of filing of the suit.

13. On the other hand, the oral testimony of P.Ws.1 and 2 coupled with Exs.A1 to A3 clinchingly establishes that the plaintiff has been in possession of the suit schedule property apart from other extent of land much less as on the date of filing of the suit. The findings recorded by the Courts below are supported by oral and documentary evidence. The trial Court granted perpetual injunction in favour of the plaintiff basing on Exs.A1 to A3. Therefore, I am unable to accede to the contention of the learned counsel for the appellant that the trial Court as well as the appellate Court granted injunction in favour of the plaintiff basing on the weaknesses on the part of the defendant.

14. This Court shall not lightly to interfere with the concurrent findings of fact recorded by the Courts below. It is needless to say that the first appellate Court is the fact finding final authority. I am fully endorsing with the findings recorded

by the Courts below. Viewed from any angle I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the first appellate Court are perverse.

15. In **Municipal Committee, Hoshiarpur v. Punjab SEB¹**, 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.

16. 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.

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

20th November, 2017
Rns

¹ (2010) 13 SCC 216

