

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.934 of 2016

JUDGMENT:

This second appeal is preferred by the unsuccessful defendants challenging the decree and judgment dated 22.8.2016 dismissing A.S.No.3 of 2014 on the file of the Court of I Additional District Judge, at Khammam wherein and whereby the decree and judgment dated 19.11.2013 in O.S. No.369 of 2010 on the file of the Court of Principal Junior Civil Judge, Khammam, decreeing the suit filed by the respondent herein for perpetual injunction, was confirmed.

2. In spite of service of notice, none appeared on behalf of the respondent.

3. Sri Kowturu Pavan Kumar, learned counsel for the appellants strenuously submitted that the findings recorded by the courts are liable to be set aside on the following two grounds: (1) the findings recorded by the courts below are perverse, and (2) the courts below have discarded Ex.C1 and the oral testimony of D.W.6 under a misconception and misnomer.

4. The appellants are defendants and respondent is plaintiff. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the suit.

5. The facts leading to filing of the second appeal are briefly as follows: The plaintiff filed the suit for perpetual injunction restraining the defendants from interfering with the suit schedule property admeasuring Acs.1.36 guntas situated in survey No.17 of Jujjularaopeta Village, Kusumanchi Mandal, Khammam District.

It is the case of the plaintiff that Pattadar Pass Book and Title Deed were issued in his favour in respect of suit schedule property. It is the further case of the plaintiff that the defendants are interfering with the suit schedule property without any right whatsoever. The defendants filed written statement opposing the claim of the plaintiff. It is the case of the defendants that they have been in possession and enjoyment of the suit schedule property.

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

1. Whether the plaintiff is entitled for perpetual injunction against the defendants as prayed for?
2. What relief?

7. To substantiate the case before the trial court, the plaintiff examined himself as P.W.1 and got marked Exs.A1 and A2. P.W.2 was examined to prove that the plaintiff was in possession of the suit schedule property. To dislodge the case of the plaintiff, the defendant Nos.1 and 2 examined themselves as D.Ws.1 and 2 and got marked Exs.B1 to B5. D.Ws.3 to 5 were examined to prove that the plaintiff was not in possession of the suit schedule property as on the date of filing of the suit. Exs.C1 to C4 were marked through D.W.6 (M.R.O.) to establish that the plaintiff has created Exs.A1 and A2 Pattadar Pass Book and Title Deed.

8. After having a thoughtful consideration to the oral, documentary evidence, and other material available on record, the trial court arrived at a conclusion that the plaintiff has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit and accordingly allowed the suit. Feeling aggrieved by the decree and judgment dated 19.11.2013 in

O.S. No.369 of 2010, the defendants preferred A.S. No.3 of 2014 on the file of the Court of I Additional District Judge, Khammam. The first appellate court, after re-appraising the oral and documentary evidence, arrived at an independent conclusion that the plaintiff has been in possession and enjoyment of the suit schedule property, therefore, he is entitled for perpetual injunction and dismissed the appeal. Hence, the second appeal.

9. Sri Kowturu Pavan Kumar, learned counsel for the appellants-defendants, strenuously submitted the findings recorded by the courts below are perverse; therefore, it is a fit case to allow the appeal. It is needless to say that if the findings of the courts below are based on the material, which is not legally admissible or based on no evidence, the findings can be branded as perverse. If the findings recorded by the courts below are perverse, this court can set aside the same by exercising the jurisdiction under Section 100 of CPC. In the case on hand, the courts below concurrently held that the plaintiff has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. The first appellate court is the final court so far as finding of fact is concerned.

10. In the light of the factual and legal scenario, let me consider whether the findings recorded by the courts below are perverse or not. As seen from the testimony of P.W.1, his father purchased the suit schedule property. After death of his father, he has been in possession and enjoyment of the suit schedule property. It is the case of the defendants that the grandfather of the defendants by name, Banoth Valu, purchased an extent of Acs.10.16 guntas in survey No.17, which includes the suit schedule property. In the

family partition, the father of the defendants got an extent of Acs.8.20 guntas and their paternal uncle Banoth Peerya got Acs.1.36 guntas. As per the recitals of Exs.B1 and B2, the defendants are in possession and enjoyment of an extent of Acs.8.20 guntas. Even as per the recitals of Exs.B3, B4 and B5 Pahanis, the defendants are in possession of an extent of Acs.8.20 guntas. It is not the case of the defendants, the plaintiff has encroached their land. There is no whisper in the testimony of D.Ws.3 to 5, who are independent witnesses, the plaintiff is not having any land in survey No.17 of Jujjularaopeta Village, Kusumanchi Mandal, Khammam District. The testimony of D.W.3, who is son of Banoth Peerya, may throw some light on the issue involved in the suit. D.W.3 in unequivocal terms deposed that he has been in possession and enjoyment of an extent of Acs.1.36 guntas of land on the South of the suit schedule property. The testimony of D.W.3 negates the contention of the defendants that the plaintiff is not having any land in survey No.17. Had the plaintiff encroached the land of D.W.3, certainly he might have approached competent court for redressal. D.W.3 in the cross-examination categorically admitted that no civil suit is pending between him and the plaintiff.

11. Exs.C2 is the original Pahani, Ex.C3 is true copy of 1B Register, and Ex.C4 is true copy of Confirmation Register relating to serial No.50. The oral testimony of D.W.6 coupled with Exs.C2 to C4 clearly reveals that the plaintiff has been in possession and enjoyment of an extent of Acs.1.36 guntas in survey No.17 of Jujjularaopeta Village. The Exs.A1 and A2, Pattadar Pass Book and Title Deed, were issued in favour of the plaintiff in respect of

the suit schedule property. The oral and documentary evidence placed before the trial court establishes that the plaintiff has been in possession and enjoyment of the suit schedule property.

12. Basing on the oral and documentary evidence, the trial court arrived at a conclusion that the plaintiff has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. The first appellate court also arrived at an independent conclusion that the plaintiff has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. The findings recorded by the courts below are fully supported by oral and documentary evidence available on record. There is overwhelming oral and documentary evidence to establish that the plaintiff has been in possession and enjoyment of the suit schedule property. I am fully agreeing with the findings recorded by the courts below.

13. Having regard to the facts and circumstances of the case, I am unable to countenance the submission made by the learned counsel for the appellants that the findings recorded by the trial court as endorsed by the appellate court are perverse; therefore, it is a fit case to set aside the findings recorded by the courts below, while exercising the jurisdiction under Section 100 of CPC.

14. Sri Kowturu Pavan Kumar, learned counsel for the appellants-defendants, strenuously submitted that the trial court as well as the first appellate court committed grave error while discarding Ex.C1 and the oral testimony of D.W.6, which eventually constitutes substantial question of law as contemplated under Section 100 of CPC. He further contended that in the light

of Ex.C1 letter, the courts below ought not to have placed reliance on Exs.A1 and A2. If once Exs.A1 and A2 are discarded, the plaintiff is not entitled for the relief of perpetual injunction. The defendants mainly relied on the oral testimony of D.W.6, the Tahsildar of Kusumanchi. Ex.C1 is the letter addressed by D.W.6 to the Court of Principal Junior Civil Judge, Khammam i.e., the trial court with a request to cancel the Pattadar Pass Book and Title Deed (Exs.A1 and A2) issued in favour of the plaintiff. I have carefully scanned Ex.C1 letter on which the learned counsel for the appellants-defendants placed much reliance to substantiate the stand of the defendants. In the cross-examination, D.W.6, in unequivocal terms, deposed that the concerned Mandal Revenue Officer issued Pattadar Pass Book and Title Deed (Exs.A1 and A2) in favour of the plaintiff in respect of the suit schedule property. His testimony further reveals that Exs.A1 and A2 issued in favour of the plaintiff were not cancelled; therefore, he addressed Ex.C1 letter to the learned Principal Junior Civil Judge, Khammam. This Court is unable to understand how a Revenue Official addresses a letter to the Court for cancellation of Pattadar Pass Book and Title Deed issued in favour of a party to the proceedings. To appreciate the contention of learned counsel for the appellants-defendants, it is not out of place to extract hereunder Section 6 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971.

6. Presumption of correctness of entries in record of rights:- Every entry in record of rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of this Act. Any mortgage or charge created earlier to a mortgage or charge created in favour of a credit agency shall lose its priority if it is not entered in the pattadar pass book.

A perusal of Section 6 clearly demonstrates that the Court can draw a presumption that the Pattadar Pass Book and Title Deed

issued in favour of an individual are true and correct unless and until contrary is proved. It is not the case of the defendants that Exs.A1 and A2 are cancelled by the competent authority. If the testimony of D.W.6 is taken into consideration, Exs.A1 and A2 issued in favour of the plaintiff are not forged documents, as contended by the defendants. For cancellation of Pattadar Pass Book and Title Deed, procedure is contemplated under the A.P. Rights in Land and Pattadar Pass Books Act, 1971. In such circumstances, no credence or credibility can be attached to Ex.C1 letter. The Act contemplates that an aggrieved party can approach the competent authority for cancellation or modification of the Pattadar Pass Book or Title Deed. Admittedly, D.W.6 is not an aggrieved party so far as Exs.A1 and A2 are concerned. If the court places reliance on a letter like Ex.C1 and cancels the Pattadar Pass Book or Title Deed, it would lead to anomaly and far reaching consequences. There is no legal sanctity to Ex.C1 when compared to Exs.A1 and A2. Viewed from factual or legal angle, Exs.A1 and A2 cannot be discarded basing on Ex.C1 letter. In such circumstances, the submission of learned counsel for the appellants that discarding of Ex.C1 and the oral testimony of D.W.6, in the light of the recitals of Exs.A1 and A2, would amount to substantial question of law has no legs to stand.

15. In the light of the foregoing discussion, I have no hesitation to hold that there is no question of law much less substantial question of law in this second appeal. There are no grounds much less cogent and valid grounds to set aside the decrees and judgments of the courts below. The second appeal is devoid of any merit.

16. The second appeal is, therefore, dismissed at the admission stage. No costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

12th April, 2017.
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