

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

SECOND APPEAL No.44 of 2013

JUDGMENT:

The unsuccessful plaintiff in O.S.No.390 of 2000 on the file of the XVII Junior Civil Judge-cum Principal Rent Controller, Secunderabad, who is also the appellant in A.S.No.135 of 2003 on the file of the I-Additional Chief Judge, City Civil Court, Secunderabad, preferred the present Second Appeal feeling aggrieved by the concurrent judgments of both the said Courts.

The appellant is the plaintiff, whereas the respondent is the defendant in the O.S before the trial Court.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.S before the trial Court.

The plaintiff laid the aforesaid O.S requesting for grant of perpetual injunction restraining the defendant-Cantonment Board represented by its Executive Officer, Secunderabad, from demolishing the suit schedule building.

The plaintiff, in fact, is represented through the General Power of Attorney holder, who is none other than her husband. She sets out her case that she owns an extent of 324 sq. yards of land bearing plot No.7 detailed in the plaint schedule and she made an application on 24.08.1998, to the defendant for sanction of plan to erect a building. According to the plaintiff, the defendant approved the plan on 23.11.1998, but, it was not released. She was constrained to file

W.P.No.35821 of 1998 and the same was disposed of on 24.12.1998 with a direction to consider the application filed by her. Later, she also filed yet another writ petition being W.P.No.9128 of 1999 seeking *Mandamus* to release the plan already sanctioned by the Cantonment Board and, according to her, the writ petition was pending by the date the suit proceedings were taken up. She states that the defendant, by its letter dated 16.08.1999, returned the plan cancelling the plan said to have been approved on 23.11.1998. According to her, since the matter was subjudice before this Court in W.P.No.9128 of 1999, the defendant did so and, therefore, the letter dated 16.08.1999 is illegal. She also pleaded that she received notice, dated 27.03.2000, issued under Section 185 of the Cantonment Act (for short, 'the Act') on 04.04.2000 and, according to her, it is also illegal as by then W.P.No.9128 of 1999 was still pending.

The defendant controverted the allegations by bringing out certain facts, which were suppressed by the plaintiff and, in fact, it clearly detailed that the request of the plaintiff was rejected by exercise of powers under Section 52 (1) (a) of the Act and the same was communicated through letter dated 16.08.1999. According to the defendant, when the inspection was made by the Supervisor of the Cantonment Board, it was found that without there being any permission to raise the construction, three floors were already raised unauthorisedly and that has been the reason notice under Section 185 of the Act was issued specifying the details and directing to demolish the structures within 30 days from the date of receipt of the said notice. The defendant

also put forth that this Court disposed of W.P.No.35821 of 1998 at the admission stage and, though, the second writ petition filed by her was pending, since there was no stay of proceedings, it cannot be said that the action of the defendant is illegal and notice was, in fact, issued in discharge of its legitimate duty.

The trial Court settled the following four issues.

- “1. Whether the plaintiff is entitled for permanent injunction as prayed for?
2. Whether there is proper cause of action for this suit?
3. Whether the suit for simplicitor without seeking for relief of declaration is maintainable?
4. To what relief?”

During the course of trial, the General Power of Attorney holder of the plaintiff examined himself as PW.1 and marked Exs.A1 to A4, whereas on behalf of the defendant, DW.1 was examined and Exs.B1 to B15 were marked.

The trial Court appreciated the evidence, both, oral and documentary, let in by both the parties under issue No.1 treating it as the main issue and taken into consideration the contentions raised by learned counsel for both parties and commented at the conduct of the plaintiff in suppressing certain material facts in paragraph ‘12’ of its judgment, which read thus:

“In view of the above discussion, it is clearly established that the plaintiff by suppressing all the material facts i.e., subsequent applications after

rejection of Ex.A-2 and without complying the notice u/s 185 (1) of the Act, she approached this court and filed the suit on misrepresenting and misleading the facts and obtained status quo order and thus completed stilt, ground, first, second and third floors unauthorisedly which is very grave offence committed by the plaintiff in the absence of any valid sanction, knowing fully well that her application submitted on 23-8-98 was rejected by order dt. 16-8-99 under Ex.A-2.”

The trial Court recorded a finding that the construction raised by the plaintiff was unauthorised and viewing the conduct of the plaintiff, opined that the plaintiff was not entitled for perpetual injunction sought for and, thereby, dismissed the suit on 21.07.2003.

The judgment and decree of the trial Court were challenged by the plaintiff in a regular appeal in A.S.No.135 of 2003 on the file of the I-Additional Chief Judge, City Civil Court, Secunderabad. The very same contentions which were putforth by the plaintiff before the trial Court were the grounds agitated by her before the appellate Court. In paragraph ‘11’ of its judgment, the learned appellate Court formulated the following three points for adjudication of the controversy in the light of the evidence by way of re-appraisal.

“1.Whether the appellant-plaintiff is justified in law to raise constructions up to third floor ?

2. Whether the appellant-plaintiff presented fresh building applications dt.25.2.1999 and 24.2.2000 suppressing the fact that his prior building application dt. 24.8.1998?

3. Whether the appellant-plaintiff is entitled for permanent injunction against the respondent-defendant?"

The appellate court also referred to the events of filing both the writ petitions by the plaintiff and noted that the Cantonment Board has rejected the building application dated 24.08.1998 of the plaintiff on 16.08.1999 and later issued notice under Section 185 (1) of the Act to the plaintiff to demolish the structures raised by her on the ground of unauthorised construction, granting 30 days' time as mandated by the statutory provisions, the details of which were referred to by the appellate court in paragraph '16' of its judgment. The main ground for rejection of the sanction by the Board was that the same was contrary to the bye-laws laid down and the said fact was also intimated to the plaintiff. The lower appellate Court, appreciating the evidence of PW.1, found that the plaintiff raised unauthorised constructions, which fact has been proved through the defendant's evidence, and in fact the plaintiff also suppressed the fact of rejection of her first application and, suppressing the same, filed two more applications successively seeking sanction. Thus, the lower appellate court also agreed with the findings of the trial court and dismissed the appeal by judgment dated 04.10.2007. Aggrieved by the same, the plaintiff filed the present Second Appeal.

Sri M.S.N.Prasad, learned counsel for the appellant, has argued with reference to the substantial questions of law raised in ground Nos. 10 and 11 of the Memorandum of Second Appeal. As could be seen

from the grounds of the Second Appeal, once again the very same facts as to filing of W.P.Nos.35821 of 1998 and 9128 of 1999 and the pendency of W.P.No.9128 of 1999 have been reiterated. In fact, a new ground is agitated in ground No.12 stating that the lower appellate court ought to have considered the subsequent events regarding the enhancement from 0.5 to 1.5 F.S.I. that was allowed by the defence authority. This was surprisingly not canvassed before the Courts below. So, unless the pleading is amended, it is not open to the plaintiff to come forward with a new ground in the Second Appeal. When concurrent findings are recorded by the Courts below and there is no perversity finding place in the findings recorded, certainly, the judgments and decrees passed by the Courts below do not warrant interference. Thus, on a perusal of the grounds agitated in the Memorandum of Second Appeal, it is to be held that no substantial questions of law, as raised in ground Nos.10 and 11 of the Memorandum of Second Appeal, do arise. There are no merits in the present Second Appeal.

Accordingly, the Second Appeal is dismissed at the admission stage.

Miscellaneous applications, if any, pending in the present Second Appeal, stand closed. No order as to costs.

JUSTICE A.SHANKAR NARAYANA

27.07.2017
v v