THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

SECOND APPEAL No.928 of 1999

JUDGMENT:

This appeal is directed against the decree and judgment dated 13.04.1999 passed in A.S.No.27 of 1992 by the learned II Additional District Judge, West Godavari District, Eluru, setting aside the decree and judgment dated 12.07.1991 passed in O.S.No.141 of 1984 by the learned I Additional District Munsif, Eluru.

The appellant is the plaintiff and she filed the suit in O.S.No.141 of 1984 for permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment over the plaint schedule property. It is stated that the suit schedule property consists of two items. The first item is pertaining to dry land of an extent of Ac.1.69 cents in R.S.No.221/24 of G.Kothapalli Village in Bhimadole Taluk and the second item is pertaining to dry land of an extent of Ac.0.21 cents in R.S.No.23/5 of G.Kothapalli Village of Bhimadole Taluk. It is stated that the plaintiff and her husband brought the schedule land for cultivation with much labour expense and since 15 years they were in possession and enjoyment of the said land. The defendants, who are father and sons, are the adjacent owners of the plaintiff having in possession of Ac.1.90 cents. The plaint schedule land is assessed as waste land and the revenue authorities have considered their occupation as unobjectionable. The plaintiff was served with Section 7 notice. Taking advantage of the helplessness position of the plaintiff, the defendants, who are adjacent owners of the plaint schedule land, are trying to encroach upon the schedule land. Hence the plaintiff filed the suit.

The defendants filed written statement denying the contents of the plaint and further stated that they are in possession and enjoyment of the land in dispute having purchased the same from Maddipati Lakshmi Tulasamma, W/o.Narayanamurthy of G.Kothapalli village by way of registered sale deed, dated 29.06.1976. The plaint schedule land is covered by the boundaries of their sale deed and hence the plaintiff has no right over the schedule property. The documents filed by the plaintiff are all manipulated.

Heard the learned counsel for the appellant as well as the respondents and perused the entire material available on record.

According to the appellant/plaintiff, her husband was the owner and possessor of suit schedule land in addition to a patta land, which is adjacent to the suit schedule land and that her husband never sold item No.1 of plaint schedule property i.e., Ac.1.69 cents to anybody and that she has been cultivating the said land after the death of her husband.

There is no controversy in respect of Item No.2 of plaint schedule land and the dispute is regarding item No.1 of suit schedule property i.e., Ac.1.69 cents in R.S.No.221/24.

According to the defendants, the plaintiff's husband sold away the land to an extent of Ac.1.69 cents along with Ac.1.30 cents of land to one Lakshmi Thulasamma, who in turn sold the said property to them under Ex.B1. Even though the plaintiff admitted that her husband sold the patta land to an extent of Ac.1.30 cents to Thulasamma, who in turn sold the same to defendant No.1, she does not say that the land sold by Thulasamma to defendant No.1 was the suit schedule land. Therefore, what is required to be seen is whether the husband of plaintiff, who admittedly is the owner of suit schedule property, sold the same to

Tulasamma, who is said to have sold the same to defendant No.1. If the plaintiff could establish that the property, which was sold by her husband to Thulasamma is different from the suit schedule property, the property sold by Thulasamma in favour of defendant No.1 will have no sanctity and vice versa. The evidence of P.W.1 has to be carefully analyzed. Similarly, Ex.B1 is a registered sale deed executed by Thulsamma in favour of defendant No.1. A perusal of Ex.B.1 would show that defendant No.1 purchased Ac.1.30 cents of land covered by R.S.Nos.235/10 and 221/23, whereas, the suit schedule property is situated in R.S.No.221/24.

The trial court by relying on Ex.A1 held that the plaintiff is in possession of the land in R.S.No.221/24, admeasuring Ac.1.69 cents, over which the defendants have no right and consequently granted injunction. However, the lower appellate court reversed the same on the ground that Exs.A1 to A5 cannot be taken as documentary evidence for possession of the plaintiff.

As already stated, there is no dispute in so far as R.S.No.235 is concerned. The plaintiff is not laying any claim thereon. Her specific case is that after having sold the land in R.S.Nos.221/23 and 235/10 she still had an extent of Ac.1.69 cents towards south of the land, sold to Lakshmi Thulasamma and this land was being encroaching by the defendants. There is no dispute that the defendants have no right whatsoever in the land over and above what has been purchased under Ex.B1 from Tulasamma, dated 29.06.1976. Perusal of Ex.B1 shows that the defendants have purchased an extent of Ac.0.70 cents in R.S.No.221/23 and Ac.0.60 cents in R.S.No.235/10, the total extent comes to Ac.1.30 cents. The defendants have not purchased the land in R.S.No.221/24, which measures Ac.1.69 cents.

During course of trial, an Advocate-Commissioner was appointed, who has been examined as PW 3 and his reports are marked as Ex.C1 to C9. Relevant of them is Ex.C9, the rough sketch prepared by the Advocate-Commissioner. Ex.C9 sketch clearly shows that the land in R.S.No.235/10 admeasuring Ac.0.60 cents, the land in R.S.No.221/23 admeasuring Ac.0.70 cents and the land in R.S.No.221/24 admeasuring Ac.1.69 cents are contiguous plots, they are abutting each other and there is fencing around to all three plots put together. The land in R.S.No.235/10 and R.S.No.221/23 is towards northern side, whereas the land in R.S.No.221/24 is towards south. The land purchased by the defendants under Ex.B1 is towards north and the land that is claimed by the plaintiff is towards south.

The plaintiff has produced Ex.A1, which is a notice issued under Section 7 of the Land Encroachment Act, which was issued by the Tahsildar of Bhimadole wherein it is clearly mentioned that the plaintiff is in possession of an extent of Ac.1.69 cents in R.S.No.221/24. The tax receipts subsequent thereto have been filed as Exs.A2 to A5. The tax receipts that are produced by the defendants are also in respect of the land which was purchased under Ex.B1. They do not pertain to R.S.No.221/24, which is being claimed by the plaintiff. The trial court has properly appreciated this aspect and granted injunction. However, the lower appellate court while observing that the genuineness of Exs.A1 to A5 was not proved, reversed the judgment of the trial court. This is an erroneous approach for the reasons that Exs.A1 to A5 are the documents issued by the revenue authorities and they are subsequent to the purchase made by the defendants under Ex.B1.

Admittedly, the plaintiff do not have any claim over the land in R.S.No.221/23 admeasuring Ac.0.70 cents and R.S.No.235/10 admeasuring Ac.0.60 cents, which has already been sold by her husband. Similarly, the defendants do not have any claim whatsoever in R.S.No.221/24, admeasuring Ac.1.69 cents, which is the suit land. Since the three bits of land is abutting each other and they are not separated by any fencing, the defendants are trying to interfere with the possession of the plaintiff over the land in R.S.No.221/24.

For the foregoing reasons, the Second Appeal is allowed. The judgment of the lower appellate court in A.S.No.27/1992, dated 13.04.1999, is set aside, while confirming the judgment of the trial court in O.S.No.141/1984, dated 12.07.1991.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAISWAL, J

Date: 12.10.2017
Dsr