

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.1370 of 2012

JUDGMENT:

This Second Appeal is preferred by the appellant/plaintiff aggrieved by the judgment dated 09.04.2012 in A.S.No.226 of 2009 passed by I Additional District Judge, R.R.District dismissing the appeal by confirming the judgment in O.S.No.No.970 of 2002 passed by II Additional Junior Civil Judge, R.R.District dismissing the suit for perpetual injunction.

2) Heard learned counsel for appellant and learned counsel for respondents regarding involvement of substantial questions of law for admission of appeal.

3) While the learned counsel for appellant would argue that both the Courts below misread the facts and evidence and appreciation of evidence was not in accordance with law, the counsel for respondents would argue that both the Courts below have carefully examined the documentary evidence produced by both parties and ultimately held that plaintiff could not prove the possession of the suit property. He submitted that the substantial questions framed by the appellant, in fact, are only questions of fact but not the questions of law much less substantial questions of law and therefore, the Second Appeal is not maintainable. He relied upon the judgment of the Apex Court in *Lisamma Antony vs. Karithiyayani*¹.

¹ 2015 AIR SCW 2824

4) The point for determination is:

“Whether any substantial questions of law are involved in this Second Appeal to adjudicate upon?”

5a) **POINT:** The appellant filed the suit for perpetual injunction in respect of Plot No.16/6 in sy.No.200 measuring 600 square yards situated at Boduppall village, Ranga Reddy District said to be purchased by her under Ex.A1—sale deed dated 20.11.1989 from her vendor—B.A.Satyanarayana through his GPA holder—Balamurugan. The 1st defendant tried to meddle with the said property and hence the suit. Second defendant was subsequently added.

b) The defendants filed their written statement opposing the suit. Their case is that the vendor of 2nd defendant and their family members were the joint owners and possessors of land in Sy.No.200 to an extent of Ac.14.00 and they made lay out in 1967. The 2nd defendant purchased Plot No.16, 17/C, 15, 51/1, 52/1, 53/1 in an extent of 3066 square yards under unregistered sale deed dated 08.07.1986 through GPA holder—G.Mallaiah and the same was regularized by the Deputy Registrar, R.R. District. From out of the land purchased by her, 400 square yards was sold by the 2nd defendant to the 1st defendant. There is no lay out for the Plot No.16/6 as contended by plaintiff and she has no right over the said land. Hence, plaintiff's suit is liable to be dismissed.

c) The trial went on. Plaintiff examined PWs.1 to 3 and marked Exs.A1 to A13. Defendants examined DWs.1 and 2 and got marked Exs.B1 to B17.

d) A perusal of the judgments of the Courts below would show that both the Courts have arrived at concurrent findings to the effect that the plaintiff could not establish the right of her vendor—B.A.Satyanarayana who executed Ex.A1 in favour of plaintiff over the suit schedule property and the plaintiff has not shown the title of the predecessor of Satyanarayana. She could not establish existence of Plot No.16/6. Both the Courts have meticulously examined each and every document filed by both sides and observed that Ex.A7 is concerned, it relates to Plot No.7/6 which was altered as 16/6. Further, the plaintiff has not produced permission proceedings granted by Gram Panchayat in favour of B.A.Satyanarayana in support of Ex.A7. The Courts below gave concurrent finding in respect of other documents also and held that plaintiff has not established her possession.

6) This Court gave anxious consideration to the above findings of the Courts below. Those findings are based on sound reasoning and therefore they cannot be termed as perverse or illegal. The substantial questions framed are though tried to be couched as questions of law but they are more or less questions of fact, but not questions of law much less substantial questions of law. In *Lisamma Antony*'s case (1 supra) while discussing what is substantial question of law the Apex Court referred to its earlier decision in *Kondiba Dagadu Kadam v. Savitribal Sopan Gujar*² wherein it is held thus:

² (1993) 3 SCC 722 = AIR 1999 SC 2213

“Para—6 If the question of law termed as substantial question stands already decided by a larger bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or procedure requiring interference in second appeal.”

Thus, it is clear that mere appreciation of facts, documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. In the instant case also except carping that the Courts below have erroneously appreciated the documentary evidence, which in my considered view not correct, the appellant could not emboss any question of law, much less substantial question of law, to adjudicate upon the appeal.

7) So, on a conspectus of concurrent findings of both the Courts, I do not find the involvement of any substantial questions of law to adjudicate

upon in this Second Appeal. Therefore, this Second Appeal is dismissed at the admission stage. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 04.12.2017

Murthy

