

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

SECOND APPEAL No.1315 OF 2012

JUDGMENT:

The unsuccessful plaintiff preferred this second appeal challenging the decree and judgment dated 28.5.2011 in A.S.No.25 of 2008 on the file of the Court of III Additional District Judge, Kakinada, wherein and whereby the decree and judgment dated 28.12.2007 in O.S.No.203 of 2003 on the file of the Court of the Principal Senior Civil Judge, Kakinada dismissing the suit filed for perpetual injunction, was confirmed.

2. The facts leading to filing of the second appeal are succinctly as follows: The first plaintiff is the husband of the second plaintiff. The plaintiffs had taken the suit schedule property on lease from one Musinada Appala Narasamma under two separate registered lease deeds dated 28.1.1997. As per the oral agreement between the plaintiffs and Appala Narasamma, the staircase shall not be used for construction of anything on the terrace. When the plaintiffs were about to issue a notice, Appala Narasamma sold the suit schedule property to the defendant under a registered sale deed dated 02.6.2003. The defendant, with an intention to cause inconvenience to the plaintiffs, attempted to remove the staircase and thereby prevented the plaintiffs' access to ADKL portion for ingress and egress. Hence, the plaintiffs filed the suit for perpetual injunction.

3. The defendant filed written statement *inter alia* contending that he purchased the suit schedule property under a registered sale deed dated 02.6.2003 from Musinada Appala Narasamma and that fact was known to the plaintiffs. There is no oral agreement

between the plaintiffs and Appala Narasamma, as averred by the plaintiffs. The defendant, being the owner by virtue of the registered sale deed, has got all the rights over the suit schedule property. There is a doorway to the staircase and it is under lock and key of the original owner. The plaintiffs have no right whatsoever on the open terrace of the suit schedule property. The plaintiffs are permitted to go to the terrace for the purpose of repairing the air condition equipment. In the event of the defendant constructs first floor, the plaintiffs can shift the air condition equipment to the terrace from the staircase. Hence, the suit is liable to be dismissed.

4. Basing on the rival contentions, the trial court framed the following issues:

- (1) Whether the plaintiffs are entitled for permanent injunction as prayed for?
- (2) To what relief?

5. Before the trial court, the first plaintiff examined himself as P.W.1 and got marked Exs.A.1 to A.7. To dislodge the case of the plaintiffs, the defendant examined himself as D.W.1 and got marked Ex.B.1.

6. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at the conclusion that the plaintiffs have not approached the Court with clean hands; therefore, they are not entitled for the equitable relief of perpetual injunction; consequently, dismissed the suit. Being aggrieved by the decree and judgment of the trial court, the unsuccessful plaintiff preferred A.S.No.25 of 2008 on the file of the Court of III Additional District Judge, Kakinada. The first appellate Court, after

reconsidering the oral, documentary evidence and other material available on record, arrived at the conclusion that the plaintiffs are not entitled for the relief of perpetual injunction and accordingly dismissed the appeal. Hence, this second appeal is preferred by the unsuccessful plaintiffs.

7. Heard the learned counsel for the appellants-plaintiffs and the learned counsel for the respondent-defendant.

8. The question of law urged by the learned counsel for the appellants is:

Whether the Courts below failed to see that the common order dated 01.8.2005 passed in I.A.Nos.1828, 1829 and 1830 of 2004 would estop the respondent from high-handedly evicting the plaintiffs, who are the statutory tenants?

9. The following admitted facts can be culled out from the pleadings and evidence available on record. The suit schedule property originally belongs to Musinada Appala Narasamma. The said Appala Narasamma leased out the suit schedule property to plaintiff Nos.1 and 2 under Exs.A.1 and A.2 registered lease deeds dated 28.1.1997. During the subsistence of the lease period, Appala Narasamma sold the suit schedule property to the defendant under registered sale deed dated 02.6.2003, original of Ex.A.3. The defendant attorned the tenancy rights of the plaintiffs.

10. It is the case of the plaintiffs that the defendant, with an intention to prevent the accessibility of the plaintiffs to the staircase marked as ADKL, made an attempt to remove the staircase. It is the case of the defendant that he has no intention to remove the staircase. It is the further case of the defendant that

he is intending to construct first floor on the terrace of the leased premises for which the plaintiffs are obstructing, in one way or the other, by approaching Court by filing suit.

11. It is the case of the plaintiffs that they entered into an oral agreement with the original owner viz., Musinada Appala Narasamma, according to which, they can use the staircase. As per the recitals of Exs.A.1 and A.2 registered lease deeds entered into between the plaintiffs and Appala Narasamma, the plaintiffs have no right whatsoever over the staircase. Any amount of oral evidence, which is contrary to the recitals of a registered document, is of no avail. If really there is an oral agreement between the plaintiffs and Appala Narasamma, who is the original owner-cum-original landlord, what prevented the plaintiffs to examine Appala Narasamma and prove the same. In view of the recitals of Exs.A.1 and A.2 registered lease deeds, I am of the considered view that the alleged oral agreement between the plaintiffs and Appala Narasamma is highly improbable and unbelievable.

12. As per the terms and conditions of Exs.A.1 and A.2 lease agreements, the defendant is the owner of the staircase and the plaintiffs can use the stair case for the purpose of repairing air condition placed on the staircase. The material available on record clinchingly establishes that the plaintiffs are obstructing the defendant to construct first floor. As per the recitals of Exs.A.1, A.2 and A.3, the defendant is entitled to construct first floor on the existing terrace. If the defendant removes the staircase, as pleaded by the plaintiffs, it is not possible for the defendant to construct first floor on the existing terrace. Therefore, the version put forth

by the plaintiffs that the defendant is intending to remove the staircase is not believable and highly improbable. The plaintiffs filed the suit seeking perpetual injunction as if the defendant is making hectic efforts to remove the staircase. Except the self-served testimony of P.W.1, there is no convincing evidence to substantiate the stand of the plaintiffs. On the other hand, the possibility of approaching the Court by the plaintiffs in order to prevent the defendant from making construction of first floor on the terrace of the leased premises is highly probable and believable. The Courts below disbelieved the version put forth by the plaintiffs. The findings recorded by the Courts below are supported by oral and documentary evidence available on record. The findings recorded by the Courts below are based on sound reasoning and logical conclusion.

13. A perusal of the record reveals that during the pendency of the suit, the plaintiffs have filed I.A.Nos.1828, 1829 and 1830 of 2004 as if the defendant violated the interim orders of the trial Court. It is needless to say that any order passed by the Court while disposing of an interlocutory application is confined to it only. Such an interlocutory order sometimes may not be relevant for disposing of the suit on merits. Whether the defendant has violated the interim orders in I.A.Nos.1828, 1829 and 1830 of 2004, or not, is purely a question of fact. Whether the said order would estop the defendant from high-handedly evicting the plaintiffs, who are statutory tenants, is a point to be considered in a suit for eviction filed by the landlord-defendant, but not in the suit for perpetual injunction filed by the plaintiffs-tenants.

14. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, while dealing with the scope of Section 100 of C.P.C., 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.

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the question of law raised by the learned counsel for the plaintiffs will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law in this appeal.

16. In the result, this second appeal fails and is accordingly dismissed at the admission stage. Miscellaneous applications, if any pending in this second appeal, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 28.11.2017.
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¹ (2010) 13 SCC 216