

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.618 of 2016

JUDGMENT:

The present second appeal is preferred by the 2nd defendant in O.S.No.218 of 1992 on the file of the Principal Junior Civil Judge, Tadepalligudem, West Godavari District, having become unsuccessful in a regular appeal in A.S.No.18 of 1999 on the file of the Senior Civil Judge, Tadepalligudem, West Godavari District, preferred by him, challenging the judgments and decrees passed by the Courts below feeling that they adversely affected his rights over the suit schedule property.

The appellant is defendant No.2, whereas respondent No.1 is the plaintiff and respondent No.2 is the defendant No.1 in the O.S.

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

Touching the fact-situation, the plaintiff is the sister of defendant Nos.1 and 2 and their father Dudipala Busiyya, who owned certain assets, died some time ago. Later, the plaintiff and the defendants effected partition orally, in which the suit schedule property of Ac.1.00 of land fell to the plaintiff's share, whereas Ac.5.00 of land was allotted to defendant No.1 and Ac.4.50 cents of land was allotted to the share of defendant No.2. According to the plaintiff, she has been in actual physical possession of the suit schedule property and, when the defendants attempted to interfere

with her possession, she filed the suit. It appears, the defendant No.1 did not dispute and sailed with the plaintiff supporting the allotment of the extents in the partition inter se effected between the parties, whereas defendant No.2 disputed it raising various contentions.

The trial Court framed the comprehensive issue as to whether the plaintiff was entitled to permanent injunction as prayed for?

During the course of evidence, the plaintiff, besides examining herself as PW.1, examined three witnesses as PWs.2 to 4 and marked Exs.A1 to A8 to substantiate her case. Defendant No.2 examined himself as DW.1, but no documents were filed on his behalf.

The trial Court, on appreciation of evidence on record, holding that defendant No.2 can work out his remedies if the suit schedule property was not partitioned, as claimed by him, by filing a separate suit for partition and, also finding that Exs.A1 to A3 would substantiate the case of the plaintiff as to her possession over the suit schedule property, decreed the suit granting permanent injunction, as prayed for, by judgment dated 19.03.1999. Aggrieved by the same, defendant No.2 preferred the aforesaid appeal suit.

The learned appellate Judge, on re-appraisal of evidence on record, independently arrived at the conclusion that there was no case for the appellant-defendant No.2 and the finding recorded by the trial Court was supported by the process of reasoning in accordance with the evidential rule and, as such, while affirming the judgment and

decree passed by the trial Court, dismissed the appeal suit by judgment dated 21.11.2005.

Heard Sri K.Chidambaram, learned counsel for the appellant, and Sri K.Jagadishwar Reddy, learned counsel for the respondent No.1-plaintiff.

In fact, the present appeal was dismissed as abated so far as the respondent No.2 herein is concerned. Of course, he is not the contesting respondent as already mentioned in the above that he being defendant No.1 was sailing with the plaintiff. In fact, the trial Court has recorded that defendant No.1 has filed a confessional written statement, perhaps feeling that he was agreeing with the claim made by the plaintiff.

Though, the learned counsel for the appellant tried to impress upon the Court that there has been some sort of perversity in recording the findings by the Courts below, however, ultimately he comes out that there has been definite observation by the Courts below that the appellant can work out his remedies by filing a separate suit in respect of the suit schedule property and that that was the only remedy left to him instead of resisting the suit filed for perpetual injunction.

Absolutely, there is no question of law, much less substantial question of law, involved, in view of the concurrent findings recorded by the Courts below, which do not suffer from any patent illegality warranting interference. There is no merit in the present appeal.

Accordingly, the Second Appeal is dismissed at the admission stage. No order as to costs.

Miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

July 24, 2017
v v

