

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.732 of 2013

JUDGMENT:

This second appeal is filed assailing the judgment and decree dated 31.12.2012 in A.S.No.69 of 2005 on the file of the Court of VIII Additional District and Sessions Judge(Fast Track Court), Ranga Reddy District, at L.B.Nagar, wherein whereby the decree and judgment dated 04.06.2005 in O.S.No.854 of 1999 passed by the Additional Junior Civil Judge, Ranga Reddy District, at L.B.Nagar, decreeing the suit filed by the plaintiff for perpetual injunction, was confirmed.

2. Heard the learned counsel for the appellant and perused the material available on record.

3. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

4. The facts leading to filing of the second appeal are briefly as follows: The plaintiff purchased plot Nos.76 and 77 admeasuring 680 square yards in Sy.Nos.250 part, Budvel village, under an agreement of sale cum power of attorney from one G.Ramana Reddy on 02.08.1999. Since the date of purchase, the plaintiff has been in possession and enjoyment of the suit schedule property. It is the further case of the plaintiff that his vendor Ramana Reddy purchased Ac.10.00 cents in Sy.No.250 of Budvel village from the pattadar by name Sri Mohd.Ali Khan through a registered sale deed 25.01.1972. The vendor of the plaintiff obtained approved lay out. In order to protect the plaint schedule property, the plaintiff

constructed a room measuring 10 X 10 feet as well as wall covering the suit schedule property. The plaintiff has been paying municipal taxes to the premises. The defendant without having any right whatsoever interfering with the plaintiff schedule property. Having no other alternative, the plaintiff filed the suit O.S.No.854 of 1999 for perpetual injunction.

5. The defendant filed written statement denying all the averments made in the plaint *inter alia* contending that he purchased an extent of 1140 square yards bearing plot Nos.76, 77 and 78 under an unregistered sale deed dated 14.11.1980 from Ramana Reddy. The defendant executed a gift deed in favour of his wife on 01.09.1982 bequeathing plot Nos.76, 77 and 78, which includes the suit schedule property. The defendant constructed the basement and room long back. Bhavani Colony Welfare Association issued a certificate in favour of the wife of the defendant. Hence, the suit may be dismissed.

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled for perpetual injunction as prayed for?
2. To what relief?

7. To substantiate the case, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A3 were marked. On behalf of the defendant, D.Ws.1 to 6 were examined and Exs.B1 to B18 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff has been in possession and enjoyment of the suit schedule

property and decreed the suit granting perpetual injunction in favour of the plaintiff and against the defendant. Feeling aggrieved by the judgment and decree dated 04.06.2005 in O.S.No.854 of 1999, the defendant preferred the appeal in A.S.No.69 of 2005 on the file of the VIII Additional District & Sessions Judge (FTC) Ranga Reddy District at L.B.Nagar. The first appellate Court, after considering the material available on record, arrived at a conclusion that the plaintiff was in possession and enjoyment of the suit schedule property as on the date of filing of the suit and consequently dismissed the appeal. Hence, the present second appeal by the defendant.

9. Sri M.Rajamalla Reddy, learned counsel for the appellant-defendant strenuously submitted that the first appellate Court ought to have decided I.A.No.301 of 2011 filed under Order 41 Rule 27 CPC in A.S.No.69 of 2005 prior to disposal of the appeal. He further submitted that the first appellate Court committed grave error while deciding I.A.No.301 of 2011 along with the appeal. He further submitted that the findings recorded by the Courts below are not based on any evidence; therefore, they are liable to be dismissed. Per contra, learned counsel for the respondent-plaintiff submitted that the first appellate Court rightly considered I.A.No.301 of 2011 along with the main appeal and dismissed the same by assigning reasons. He further submitted that the first appellate Court gave a specific finding that photo copy of unregistered sale deed cannot be marked.

10. The question of law raised in this appeal is as follows:

“Whether the first appellate Court committed any error while deciding I.A.No.301 of 2011 along with the main appeal?”

11. It is the case of the plaintiff that he purchased the suit schedule property under Ex.A1 agreement of sale cum power of attorney dated 02.02.1999 from G. Ramana Reddy. It is the case of the defendant that he purchased the property from the said Ramana Reddy under a simple sale deed dated 14.11.1980. Both the parties are claiming title through Ramana Reddy. The said Ramana Reddy was examined as P.W.3. The oral testimony of P.W.3 clearly reveals that he sold the property to the plaintiff. His testimony further reveals that he did not sell any property to the defendant. A perusal of Ex.A2 clearly reveals that the concerned municipality issued assessment number in the name of the plaintiff. A perusal of Ex.A3 reveals the plaintiff paid tax in respect of suit schedule property.

12. As per the oral testimony of D.Ws.2 to 6, the defendant is in possession of the property. Exs.B1 to B8 photoes are no way helpful to the defendant to establish that he purchased the property from Ramana Reddy. The other documents are also no way helpful to the defendant to prove that he purchased the property from Ramana Reddy. For one reason or other, the defendant did not choose to produce the unregistered sale deed before the trial Court. The oral testimony of P.Ws.1 to 3 coupled with Exs.A1 to A3 clearly reveals that the plaintiff has been in possession and enjoyment of the property much less as on the date of filing of the suit. No document is filed by the defendant to

establish that he was in possession of the property as on the date of filing of the suit. Basing on the oral and documentary evidence the trial Court decreed the suit. The first appellate Court also after reappraising the oral and documentary evidence, without being influenced by the findings of the trial Court, arrived at a conclusion that the plaintiff was in possession of the property as on the date of filing of the suit and dismissed the appeal. Both courts concurrently held that the plaintiff was in possession and enjoyment of the property as on the date of filing of the suit. The first appellate Court is the fact finding final Court.

13. During pendency of the appeal, the appellant filed I.A.No.301 of 2011 under Order 41 Rule 27 CPC to receive the photo copy of the unregistered sale deed as additional evidence in A.S.No.69 of 2005. A person who filed the petition under Order 41 rule 27 CPC has to establish that in spite of his best efforts he could not secure the document during pendency of the trial. He also has to establish that the Court cannot adjudicate the matter effectively without the said document. While deposing evidence before the trial Court as D.W.1, the defendant in unequivocal terms deposed that he was having photo copy of the unregistered sale deed. This clearly indicates that the photo copy of the unregistered sale deed was in the custody of the defendant even during pendency of the trial. For the reasons best known, the defendant did not choose to file the said photo copy before the trial Court. In such circumstances, the defendant is not entitled to file an application under Order 41 Rule 27 CPC during pendency of the appeal.

14. To substantiate his argument, learned counsel for the respondent – plaintiff draw the attention of this Court to the

decision in **V.Ranga Reddy v. C.Rama Krishna Reddy**¹, this

Court held at paragraph No.7 as follows:

7. Having regard to the observation of the Apex Court referred to above, it is always expedient for the Court to examine the interim application filed under Order 41 Rule 27 CPC while hearing the main appeal in order to arrive at a right conclusion and also, if necessary, by taking into consideration the documents so sought to be received by the Court and filed under Order 41 Rule 27 CPC., and if the Court is of the satisfaction that even without taking into consideration the documents so sought to be received by the Court, a judgment in a satisfactory manner can be rendered, the interim application in that regard can also be discarded. However, it is always desirable, as held by the Supreme Court, to take into consideration the documents sought to be received along with the hearing of the appeal. Any conclusion arrived at would only amount to a premature conclusion, which may sometimes cause prejudice to the case of either party. Following the judgment referred to above, I have no option but to allow the revision. Hence, I.A.No.37 of 2004 in A.S.No.10 of 2002 is liable to be set aside and the same, accordingly, set aside.

2. In **State of Rajasthan v. T.N.Sahani**², the Hon'ble apex

Court held at paragraph No.4 as follows:

4. It may be pointed out that this Court as long back as in 1963 in K.Venkataramaiah V. Seetharama Reddy³ pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal.

¹ 2005 LawSuit (AP) 113

² (2001) 10 SCC 619

³ AIR 1963 SC 1526

15. As per the principle enunciated in the cases cited supra, any application filed under Order 41 Rule 27 CPC has to be decided along with the appeal only.

16. In **Municipal Committee, Hoshiarpur v. Punjab SEB⁴**, while dealing with the scope of Section 100 of CPC, 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.

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that there is no question of law much less substantial question of law involved in this appeal.

18. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

09th November, 2017
Rns

⁴ (2010) 13 SCC 216