

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

SECOND APPEAL No.326 of 2017

JUDGMENT:

1 Assailing the judgment dated 08.12.2016 passed in A.S.No.128 of 2014 on the file of the Court of the III Additional District Judge, R.R. District at L.B.Nagar confirming the judgment and decree dated 02.06.2014 passed in O.S.No.356 of 2012 on the file of the Court of the II Additional Junior Civil Judge, R.R. District at L.B.Nagar, the unsuccessful plaintiff filed the present second appeal.

2 For the sake of convenience, the parties to this second appeal will, hereinafter be referred to, as they were arrayed in the suit.

3 The facts leading to the filing of the present second appeal, in nutshell, are as follows:

4 The case of the plaintiff is that he purchased an extent of 200 sq. yards in plot No.15 (Northern Part) in Sy.No.11 situated at Mansoorabad village, Sarrornagar Mandal, Ranga Reddy District (hereinafter referred to as 'the plaint schedule property) from one Mettu Narahari Rao, vide registered sale deed dated 06.12.1994 and ever since, he has been in possession and enjoyment of the same. It is the further case of the plaintiff that the defendant, without any right whatsoever, is interfering with the plaint schedule property. Having no other alternative, the plaintiff instituted

the suit against the defendant seeking the relief of perpetual injunction, restraining the defendant from interfering with the plaint schedule property.

5 The defendant filed the written statement denying the various averments made in the plaint, *inter alia* contending that he purchased an extent of 200 sq. yards in plot No.15-B in Sy.No.11 situated at Mansoorabad village, Sarrornagar Mandal, Ranga Reddy District from one Swamy Reddy under a registered sale deed dated 09.05.1985 and ever since he has been in possession and enjoyment of the same. It is the further case of the defendant that his vendor Swamy Reddy executed a sale deed, in respect of Plot No.15-B, second time in favour of one Narahari Rao by changing the plot number. The plaintiff purchased the suit schedule property from the said Naraharirao. The plaintiff's sale deed is subsequent to the sale deed of the defendant. It is the further case of the defendant that the plaintiff, by suppressing all these facts, filed the suit and hence the suit may be dismissed.

6 Basing on the above pleadings, the trial court framed the following issue:

“Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?”

7 Before the trial court, on behalf of the plaintiff P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On

behalf of the defendant D.Ws.1 and 2 were examined and Exs.B.1 to B.8 were marked.

8 Basing on the oral, documentary evidence and other material available on record, the trial court arrived at a conclusion that there is a dispute with regard to the identity of the suit schedule property. The trial court further held that the plaintiff failed to prove his possession over the suit schedule property as on the date of filing of the suit and accordingly dismissed the suit.

9 Feeling aggrieved by the judgment and decree dated 02.06.2014 passed in O.S.No.356 of 2012, the plaintiff preferred A.S.No.128 of 2014 on the file of the Court of the III Additional District Judge, R.R. District at L.B.Nagar. The first appellate Court, after reappraising the oral and documentary evidence available on record afresh, arrived at a conclusion that the plaintiff failed to establish that he was in possession and enjoyment of the suit schedule property as on the date of filing of the suit and dismissed the appeal. Hence the present second appeal by the unsuccessful plaintiff.

10 The learned counsel for the plaintiff submitted that both the courts below have not properly considered the oral and documentary evidence and dismissed the suit and appeal on assumptions and presumptions. He further

submitted that the findings recorded by the Courts below are perverse and liable to be set aside.

11 The substantial questions of law urged by the learned counsel for the plaintiff / appellant are-

- i. Whether the courts below are justified in placing reliance on Exs.B.4 to B.6 and B.8?
- ii. Whether the trial court considered the scope of Section 38 of Specific Relief Act?

12 The learned counsel for the defendant strenuously submitted that this Court shall not lightly interfere with the concurrent finding of fact recorded by the courts below. He further submitted that there is no substantial question of law involved in this second appeal and hence the same is liable to be dismissed.

13 In order to appreciate the contentions raised by the learned counsel for the plaintiff, this Court is placing reliance on the ratio laid down in *Municipal Committee, Hoshiarpur v. Punjab SEB*¹ wherein the Hon'ble Apex Court held at para No.16 as follows:

16. Thus, it is evident from the above that the right to appeal is a creation of Statute and it cannot be created by acquiescence of the parties or by the order of the Court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a Court or Authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance of the conditions mentioned in the provision that creates it. Therefore, the Court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. 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

¹ (2010) 13 SCC 216

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 C.P.C. It is the obligation on the Court to further the clear intent of the Legislature and not to frustrate it by ignoring the same. (Vide: Santosh Hazari v. Purshottam Tiwari (dead) by Lrs. AIR 2001 SC 965; Sarjas Rai and Ors. v. Bakshi Inderjeet Singh (2005) 1 SCC 598; Manicka Poosali (Deceased by L.Rs.) and Ors. v. Anjalai Ammal and Anr. AIR 2005 SC 1777; Mst. Sugani v. Rameshwar Das and Anr. AIR 2006 SC 2172; Hero Vinoth (Minor) v. Seshammal: AIR 2006 SC 2234; P. Chandrasekharan and Ors. v. S. Kanakarajan and Ors. (2007) 5 SCC 669; Kashmir Singh v. Harnam Singh and Anr. AIR 2008 SC 1749; V. Ramaswamy v. Ramachandran and Anr. (2009) 14 SCC 216; and Bhag Singh v. Jaskirat Singh and Ors. (2010) 2 SCC 250).

14 Let me consider the facts of the case on hand in the light of the above legal principle.

15 The following admitted facts can be culled out from the pleadings of the plaintiff and the written statement.

16 One Mettu Narahari Rao purchased an extent of 200 sq. yards plot No.15 (Northern Part) in Sy.No.11 situated at Mansoorabad village, Sarrornagar Mandal, Ranga Reddy District from one Swamy Reddy who is the GPA holder of the original owner. The plaintiff purchased the said property from the said Mettu Narahari Rao under a registered sale deed dated 06.12.1994. The defendant purchased an extent an extent of 200 sq. yards in plot No.15-B in Sy.No.11 situated at Mansoorabad village, Sarrornagar Mandal, Ranga Reddy District from one Swamy Reddy under a registered sale deed dated 09.05.1985. The fact remains that the said Swamy Reddy is the General

Power of Attorney Holder of the original owner of the suit schedule property.

17 The case of the plaintiff is that Plot No.15 (Northern Part) i.e. the suit schedule property and Plot No.15-B is not one and the same. The contention of the defendant is that the suit schedule property and Plot No.15-B is one and the same. It is the further contention of the defendant that Swamy Reddy changed the plot number and sold the suit schedule property to Narahari Rao from whom the plaintiff purchased the property. A perusal of the record reveals that it is not the case of the plaintiff that the defendant is his neighbouring owner.

18 To substantiate the case, the plaintiff mainly relied on Ex.B.1, which is the certified copy of the registered sale deed executed in favour of the defendant. The fact remains that both plaintiff and defendant are admitting that Swamy Reddy is the GPA holder of the original owner. This clearly reveals that the plaintiff was very much aware of purchasing the property by the defendant way back in the year 1985. When the defendant has taken a specific plea that the property covered under Ex.B.1 and the plaint schedule property is one and the same, it is the duty of the plaintiff to establish that both are not one and the same.

19 To substantiate the case, the plaintiff examined P.W.2. In the cross examination P.W.2, in unequivocal terms, deposed that she was not aware whether the plaintiff is in possession and enjoyment of the suit schedule property. She further deposed that she was not present at the time of execution of the sale deed in favour of the plaintiff. P.W.2 has given one version in chief examination and another version in the cross examination. Therefore, much weight cannot be attached to the testimony of P.W.2. A perusal of the record reveals that P.W.2 is a close relative of P.W.1.

20 As seen from the testimony of D.W.2, the defendant has been in possession and enjoyment of the property since 1985. A perusal of Ex.B.3 reveals that the defendant has obtained permission from GHMC for construction of compound wall. The defendant is also paying taxes to the suit schedule property. A perusal of Ex.B.8 reveals that the defendant had obtained electricity connection to the suit schedule property. The documents filed by the defendant clinchingly establish that he purchased plot No.15-B from one Swamy Reddy and he has been in possession and enjoyment of the same since 1985.

21 It is the case of the plaintiff that the total extent of plot No.15 is 516 sq. yards out of which the plaintiff purchased 200 sq. yards and the defendant purchased 200 sq. yards. If

the plaintiff's version is taken into consideration, still there is a vacant site of 116 sq. yards. If really the total extent of Sy.No.15 is 516 sq. yards, what prevented the plaintiff to examine the concerned officials to prove the same? The stand taken by the plaintiff that the total extent of plot No.15 is 516 sq. yards is not supported by any oral or documentary evidence. It is a settled principle of law that the person who seeks equitable relief must come to the court with clean hands. It is needless to say that a person who seeks perpetual injunction has to establish that he has been in possession and enjoyment of the property much less as on the date of filing of the suit. Except the Ex.A.1 sale deed, nothing is produced before the court to establish that the plaintiff was in possession of the suit schedule property as on the date of filing of the suit. The trial court made an observation that there is a dispute with regard to the identity of the suit schedule property. Even at the stage of appeal, the plaintiff has not taken any steps to clarify that the suit schedule property and the property covered under Ex.B.1 certified copy of registered sale deed is not one and the same. The first appellate Court, after reappraising the oral and documentary evidence and without being influenced by the findings of the trial court, arrived at a conclusion that the plaintiff was not in possession of the suit schedule property as on the date of filing of the suit.

22 Both courts concurrently held that the plaintiff was not in possession of the suit schedule property as on the date of filing of the suit. The first appellate court is the final fact finding court. While exercising jurisdiction under Section 100 CPC, this court cannot go into the factual aspects. The findings recorded by the courts below are supported by oral and documentary evidence. Therefore, I am unable to accede to the contention of the learned counsel for the plaintiff/appellant that the findings recorded by the courts below are perverse. Both the courts below considered Ex.B.1, B.4, B.5, B.6 and B.8 in right perspective. The recitals of these documents falsify the claim of the plaintiff. These documents were issued by the competent authority. Therefore, I am unable to accede to the contention of the learned counsel for the appellant that the trial court misconstrued the recitals of those documents. The plaintiff failed to prove that he was in possession of the suit schedule property and that the defendant is interfering with the suit schedule property without any right. The courts below considered the scope of Section 37 and 38 of Specific Relief Act in right perspective and rejected the relief sought by the plaintiff.

23 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 there is no question of law, much less, substantial question of law, in this appeal, which warrants interference of this Court while exercising jurisdiction under Section 100 CPC.

24 Hence the appeal is dismissed at the stage of admission.

T.SUNIL CHOWDARY, J

Date: October 31, 2017

Kvsn

