

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.729 OF 2015

JUDGMENT:

This Second Appeal is filed, under Section 100 of C.P.C., by the legal representatives of unsuccessful plaintiff assailing the decree and judgment dated 12.06.2015 in A.S.No.411 of 2011 on the file of the Court of the Special Sessions Judge for SC/ST (POA) Act, 1989-cum-Additional District and Sessions Judge at L.B.Nagar, Ranga Reddy District, wherein and whereby the decree and judgment dated 21.07.2010 in O.S.No.1022 of 2009 on the file of the Court of the I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, granting perpetual injunction in favour of the plaintiff, was reversed.

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

3. The facts leading to filing of the suit are briefly as follows: The plaintiff purchased the suit schedule property from one Afsari Begum under a registered sale deed dated 13.03.2002 vide document No.1364/2002. Ever since the plaintiff has been in possession and enjoyment of the suit schedule property. The plaintiff's vendor purchased the suit schedule property from Shastripuram Co-operative House Building Society Limited under a registered sale deed dated 19.05.1982. The plaintiff constructed one room in the suit schedule property. While so, on 18.08.2007 defendant Nos.1 and 2 along with antisocial elements made an attempt to encroach the suit schedule property. Therefore, the plaintiff was constrained to file the suit for perpetual injunction.

4. The defendants filed written statement denying all the averments made in the plaint *inter alia* contending that the plaintiff filed the suit basing on fabricated house tax receipts even though he was not in possession of the suit schedule property. Afsari Begum purchased the suit schedule property under a registered sale deed dated 19.05.1982 from Shastripuram Co-operative House Building Society Limited. The second defendant purchased the suit schedule property from Afsari Begum under a registered sale deed vide document No.7629/1996. The second defendant executed agreement of sale-cum-GPA in favour of the first defendant vide document No.17962/2006 dated 27.12.2006. The second defendant delivered the suit schedule property to the first defendant. The first defendant has been in possession and enjoyment of the suit schedule property from 27.12.2006. The plaintiff filed the false suit with an intention to harass the defendants and he was never in possession of the suit schedule property. Hence, the suit is liable to be dismissed.

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

1. Whether the plaintiff is in possession and enjoyment over the suit schedule property?
2. Whether the defendants have tried to dispossess the plaintiff from the suit schedule property on 18.08.2007 and 19.08.2007?
3. Whether the plaintiff is entitled to the relief of perpetual injunction as prayed for?
4. To what relief?

6. Before the trial Court, on behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A.1 and A.7 were marked. On behalf of the

defendants, DWs.1 and 2 were examined and Exs.B.1 to B.5 were marked.

7. After having a thoughtful consideration to the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff was in possession of the suit schedule property as on the date of filing of the suit; consequently, decreed the suit granting the relief of perpetual injunction. Feeling aggrieved by the decree and judgment of the trial Court, the defendants have preferred A.S.No.411 of 2011 on the file of the Court of Special Sessions Judge for SC/ST (POA) Act, 1989-cum- Additional District and Sessions Judge at L.B.Nagar, Ranga Reddy District. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record, without being influenced by the findings recorded by the trial Court, came to a conclusion that the plaintiff failed to prove that he was in possession of the suit schedule property as on the date of filing of the suit; consequently allowed the appeal by setting aside the decree and judgment of the trial Court. Hence, the second appeal is preferred by the legal representatives of the unsuccessful plaintiff.

8. Heard the learned counsel for the appellants, the learned counsel for the respondents and perused the material available on record.

9. The questions of law urged by the learned counsel for the appellants are as follows:

1. Whether the first appellate Court is justified in disbelieving Exs.A.3 to A.5 Municipal Assessment and house tax receipts? And
2. Whether the findings recorded by the first appellate Court are perverse?

10. Point Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

11. The following admitted facts can be culled out from the pleadings and evidence: Originally the suit schedule property belongs to Shastripuram Co-operative House Building Society Limited. One Afsari Begum purchased the suit schedule property from the Shastripuram Co-operative House Building Society Limited under a registered sale deed dated 19.05.1982 (Ex.B.3). The second defendant purchased the suit schedule property from the said Afsari Begum under a registered sale deed dated 12.08.1996 (Ex.B.2). The first defendant purchased the suit schedule property under a registered Agreement of Sale-cum-GPA from the second defendant on 27.12.2006 (Ex.B.1). The plaintiff purchased the suit schedule property from the said Afsari Begum under a registered sale deed dated 13.03.2002 (Ex.A.1). Ex.A.2 is the original sale deed dated 19.05.1982. Ex.B.3 is certified copy of sale deed dated 19.05.1982. Both documents are one and the same.

12. In a suit for perpetual injunction, the plaintiff has to establish that he has been in possession and enjoyment of the suit schedule property much less as the date of filing of the suit. Once the plaintiff establishes that he was in possession of the property, the onus of proof shifts on the defendant to establish that the plaintiff was not in possession of the property at the relevant point of time. To substantiate the case, the plaintiff examined himself as PW.1 and got marked Exs.A.1 to A.7. PW.2 is the neighbour. To

nonsuit the plaintiff, the first defendant examined himself as DW.1 and got marked Exs.B.1 to B.5. DW.2 is the neighbour. PW.1 and DW.1, being parties to the suit, the possibility of deposing evidence to suit their claim cannot be ruled out completely. Likewise, the possibility of supporting the version of plaintiff by PW.2 and the case of defendants by DW.2 cannot be ruled out. It is not in dispute that Afsari Begum purchased the suit schedule property from Shastripuram Co-operative House Building Society Limited under a registered sale deed dated 19.05.1982 (Exs.A.2 and B.3). The said Afsari Begum sold the suit schedule property in favour of the second defendant under a registered sale deed dated 12.08.1996 (Ex.B.2). The second defendant in turn sold the suit schedule property to first defendant under Ex.B.1. The said Afsari Begum again executed a sale deed in favour of the plaintiff on 13.03.2002 (Ex.A.1). The material placed before the Court clinchingly establishes that the second defendant is a prior purchaser. As per the recitals of Ex.B.2, Afsari Begum delivered the suit schedule property in favour of the second defendant on 12.08.1996. It is not in dispute that as on 13.03.2002 Afsari Begum has no title over the suit schedule property. In such circumstances, execution of sale deed dated 13.03.2002 (Ex.A.1) by Afsari Begum in favour of the plaintiff *prima facie* is not legally sustainable.

13. As rightly pointed out by the learned counsel for the appellants, the Court has to consider who was in possession of the property as on the date of filing of the suit. To prove the possession, the plaintiff placed reliance on Exs.A.3 to A.5 Municipal Assessment and house tax receipts. The plaintiff in

unequivocal terms admitted that there are some corrections in Exs.A.3 to A.5 Municipal Assessment and house tax receipts. He further deposed that house number was altered from 8-15-32/A/2 to 8-14-32/A/2. The plaintiff filed the suit seeking perpetual injunction in respect of House bearing No.8-14-32/A/2. The plaintiff did not choose to examine the persons, who issued Exs.A.3 to A.5 to explain the reasons for corrections on it. For the reasons best known, the plaintiff did not choose to examine the persons, who issued Ex.A.3 to A.5. Ex.A.6 and Ex.B.5 are the Encumbrance Certificates. As per the recitals of Ex.A.6 and Ex.B.5 Encumbrance Certificates, the first defendant was in possession of the suit schedule property. In Ex.A.6 and Ex.B.5, it is not mentioned that the plaintiff was in possession of the suit schedule property as on the date of filing of the suit. The trial Court disbelieved Exs.A.3 to A.5 Municipal Assessment and house tax receipts and Ex.A.1 sale deed. To prove the possession, the plaintiff filed bunch of photos Ex.A.7. The trial Court having disbelieved the sale deed, Municipal Assessment and house tax receipts filed by the plaintiff, granted perpetual injunction solely basing on Ex.A.7 photos. The trial Court proceeded on a wrong premise as if the photos legally proved the possession of the plaintiff over the suit schedule property. The plaintiff did not choose to examine the photographer. The trial Court having disbelieved the documents filed by the plaintiff ought not to have granted perpetual injunction solely basing on Ex.A.7 photos, which have no evidentiary value.

14. The first appellate Court considered the documents filed by both parties in a right perspective and arrived at a conclusion that

Afsari Begum has no right whatsoever to execute the sale deed in favour of the plaintiff on 13.03.2002. The first appellate Court rightly disbelieved Ex.A.7 photos. The trial Court lost sight of the recitals of Ex.A.6 and Ex.B.5 Encumbrance Certificates, which were issued by the competent authority. Viewed from any angle, no credibility can be obtained to Exs.A.3 to A.5. As observed earlier, *prima facie* no reliance can be placed on Ex.A.1 sale deed. Except the averments in the plaint, nothing was produced by the plaintiff to prove that he has been in possession of the suit schedule property since 13.03.2002 much less as on the date of filing of the suit. A person, who was not in possession of the property, is not entitled for the relief of perpetual injunction. The first appellate Court has considered the factual and legal aspects in right perspective and set aside the decree and judgment of the trial Court. The findings of the trial Court are not based on any evidence much less legally admissible evidence, whereas the findings recorded by the first appellate Court are based on sound reasoning and logical conclusion. Moreover, the findings recorded by the first appellate Court are supported by evidence much less legally admissible evidence. In view of the above discussion, I am unable to accede to the contention of the learned counsel for the appellants that the findings recorded by the first appellate Court are perverse and liable to be set aside.

15. 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:

¹ (2010) 13 SCC 216

“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. ...”

16. 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 questions of law urged by the learned counsel for the appellants will not fall within the ambit of Section 100 of C.P.C. The questions of law raised by the appellants have no substance. Hence, the appeal is liable to be dismissed.

17. In the result, the Second Appeal is dismissed at the stage of admission. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 21.12.2017
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