

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

SECOND APPEAL No.177 OF 2017

JUDGMENT:

Vide the present second appeal, the appellants/plaintiffs seek direction thereby setting aside the decree and judgment dated 27.08.2014 passed in O.S.No.149 of 2011 by the Principal Junior Civil Judge, Sattenapalli, Guntur District as confirmed in A.S. No.8 of 2014 by the Senior Civil Judge, Sattenapalli, Guntur District, vide its judgment dated 08.09.2016.

2. The appellants/plaintiffs have filed O.S No.149 of 2011 for permanent injunction restraining the respondent/defendant, his men and followers from ever interfering with the appellants/plaintiffs' peaceful possession and enjoyment of the plaint schedule property. After considering the pleadings of both parties, the Court below framed the following issues, which reads as under:

1. Whether the plaintiff is in possession and enjoyment of the plaint schedule property as on the date of suit?
2. Whether the plaintiff is entitled for injunction as prayed for?
3. To what relief?

3. Learned Principal Junior Civil Judge observed that the respondent/defendant is the son of Yarlagadda Anjamma and the same was admitted by PW.1. Exs.A6 to A8, which clearly show that Yarlagadda Anjamma has filed O.S.No.277 of 2000 before the Principal Junior Civil Judge, Narasaraopet for recovery of possession of the schedule property therein and other property i.e.,

item No.4 of the schedule in the same suit. The suit was decreed in favour of Yarlagadda Anjamma. Thereafter, appellants/plaintiffs have filed appeal in A.S No.56 of 2003 on the file of Principal Senior Civil Judge, Narasaraopet and the same was also dismissed. Later, they preferred Second Appeal before this Court and the same is pending, which is not disputed by the counsel for the appellants/plaintiffs.

4. Accordingly, the Principal Junior Civil Judge, Sattenapalli in its order dated 27.08.2014 opined that the appellants/plaintiffs are admitting that item Nos. 1 to 3 of the properties in the suit schedule and the item Nos. 1 to 3 of the properties in the schedule in O.S.No.277 of 2000 are one and the same. It is further recorded that the first plaintiff did not file the registered sale deed dated 19.01.1995 to prove his contention that he had purchased the same from Rayudu Anjaneyulu, who deposed that he did not know the source of acquisition of plaint schedule property by his father-in-law. The mother of the respondent/defendant has filed O.S.No.277 of 2000 in the year 2000 itself for recovery of possession of the plaint schedule property. As is evident from the evidence of PWs.1 and 2 coupled with Ex.A6 to Ex.A8 that rights of the properties are not yet to be decided as the second appeal is pending before this Court. In the year 2011, the appellants/plaintiffs have filed the suit against the son of Yarlagadda Anjamma seeking relief of permanent injunction. The Principal Junior Civil Judge, opined that as the rights of the parties are yet to be decided and the second appeal is pending before this Court vide S.A.No.902 of 2009 and in view of the facts

and circumstances of the case, the appellants/plaintiffs are not entitled for the relief of permanent injunction as prayed for.

5. Being aggrieved by the aforesaid order, the appellants/plaintiffs have filed A.S.No.8 of 2014 before the Senior Civil Judge, Sattenapalli and the same was dismissed vide order dated 08.09.2016 by recording that the appellants/plaintiffs are admitted that this Court has already granted stay of the decree and judgment, and so, the appellants/plaintiffs are in possession and enjoyment of the schedule property. Whereas, the respondent/defendant contends that the appellants/plaintiffs are never declared as title holders and that they are not in lawful possession and enjoyment of the suit schedule property, and so, the stay order granted by this Court in S.A.No.902 of 2009 will not lead to the conclusion that the appellants/plaintiffs are in possession and enjoyment of the schedule property.

6. The aforesaid Court opined that as per decree and judgment marked as Ex.A7 shows that the mother of respondent/defendant i.e., Anjamma was declared as original owner of the plaint schedule properties. So, no permanent injunction would be granted against the true owner.

7. This Court has put a specific query to the learned counsel appearing on behalf of the appellants/plaintiffs that when the S.A No.902 of 2009 is already pending before this Court filed by the appellants/plaintiffs itself, and interim protection has already been granted not to disturb the possession of the appellants herein, then what was the occasion to file O.S.No.149 of 2011. To which, learned counsel replied that since this Yarlagadda Subba Rao i.e.,

respondent herein was not a party in the proceedings in S.A.No.902 of 2009 and he was disturbing the possession, therefore the appellants/plaintiffs have filed O.S.No.149 of 2011.

8. It is not in dispute that the respondent herein was not a party in O.S.No.277 of 2000 and the appellants/plaintiffs were enjoying the possession by virtue of the interim direction passed by this Court in S.A.No.902 of 2009, and in that situation, if the respondent was claiming possession from the appellants/plaintiffs, he had to file the suit for recovery of possession. However, the appellants/plaintiffs have approached the Court below and filed O.S.No.149 of 2011 for permanent injunction restraining the respondent/defendant.

9. The appellants/plaintiffs are aggrieved by the order dated 27.8.2014 passed in O.S.No.149 of 2011 and order dated 08.09.2016 confirmed in A.S.No.8 of 2014. However, the Court below i.e., Principal Junior Civil Judge has clarified in its order dated 27.8.2014 that as the rights of the parties are yet to be decided and second appeal is pending before this Court vide S.A.No.902 of 2009. Therefore, the appellants/plaintiffs are not entitled for relief of permanent injunction as prayed for.

10. In view of the facts recorded above, I am of the considered opinion that in O.S.No.277 of 2000, the appellants/plaintiffs could not get relief, and by challenging the same, they preferred appeal in A.S.No.56 of 2003, and thereafter filed Second Appeal, which is pending before this Court, and in the said appeal, as interim stay has already been granted by this Court, the appellants/plaintiffs have filed the suit in O.S.No.149 of

2011, so that they would be able to get permanent injunction restraining the respondent/defendant, which he could not get in earlier O.S. filed, against which, second appeal is pending before this Court.

11. The grounds taken in the present appeal are that the appellants/plaintiffs are in possession of the suit schedule property, therefore declaring the respondent as true owner is not correct. Whereas, in order dated 27.8.2014 passed by Principal Junior Civil Judge, has specifically recorded that as the rights of the parties are yet to be decided and second appeal is pending before this Court vide AS No.902 of 2009, therefore there is no substance in the grounds based upon which the present appeal is filed.

12. In view of the above, when a Second Appeal before this Court is already pending, therefore the Courts below have rightly passed order, and there is no illegality or perversity in the said orders.

13. Finding no merit in the present Second Appeal and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date : 10-03-2017
Gvl