

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.869 of 2012

JUDGMENT:

This second appeal is filed challenging the judgment and decree dated 03.03.2009 in A.S.No.53 of 2005 on the file of the Court of II Additional District Judge), Nalgonda at Suryapet, wherein whereby the decree and judgment dated 28.09.2005 in O.S.No.106 of 2000 on the file of the Junior Civil Judge, at Kodad, decreeing the suit filed by the plaintiff for perpetual injunction, was reversed.

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

3. The facts leading to filing of the second appeal are briefly as follows: The plaintiff purchased an extent of Ac.1.20 guntas in Sy.No.1060/1 situated at Revuru village under an unregistered sale deed from one Chakali Venkatappaiah, ever since she has been in possession and enjoyment of the suit schedule property. Pattadar pass book was issued in favour of the plaintiff. The defendants 1 to 3 without having any right whatsoever are interfering with the suit schedule property. Hence, the plaintiff filed the suit for perpetual injunction.

4. The third defendant filed written statement denying all the averments made in the plaint *inter alia* contending that he is the absolute owner and possessor of an extent of Ac.1.00 in Survey No.1060/10 of Revuru village. Defendants 2 and 3 have been in possession and enjoyment of the suit schedule property for the last three years. After receiving the suit summons, the defendants

approached the Mandal Revenue Officer, Mellacheruvu and filed an application for verification and local survey. The Mandal Surveyor measured the land and prepared a rough sketch map on 08.07.2000 and conducted a panchanama on 11.07.2000 in the presence of village elders. The Revenue Divisional Officer issued occupancy certificate in favour of the third defendant. Defendant No.1 sold Ac.1.00 in Survey No.1060/10 on 30.05.2000 for valid consideration under an agreement of sale and delivered the possession of the land to her, hence, the suit may be dismissed. Defendants 1 and 2 filed memo adopting the written statement of D3.

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

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

6. To substantiate the case, on behalf of the plaintiff, P.Ws.1 to 5 were examined and Exs.A1 to A9 were marked. On behalf of the defendants, D.Ws.1 to 4 were examined and Exs.B1 to B11 were marked.

7. Basing on the oral, documentary evidence and other material available on record, the trial Court decreed the suit in favour of the plaintiff. Feeling aggrieved by the judgment and decree dated 28.09.2005 in O.S.No.106 of 2000, defendants 1 to 3 preferred A.S.No.53 of 2005 on the file of the II Additional District Judge, Nalgonda, at Suryapet. The first appellate Court after reappraising the oral, documentary evidence and other material available on record arrived at a conclusion that the plaintiff failed to prove that she was in possession and enjoyment of the suit schedule property as on the

date of filing of the suit and consequently allowed the appeal setting aside the decree and judgment passed by the trial Court. Hence, the present second appeal by the plaintiff.

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

9. The question of law that arises for consideration in this appeal is as follows:

“Whether the findings recorded by the first appellate Court are perverse?”

10. The suit schedule property is an extent of Ac.1.20 guntas in Survey No.1060/1 of Revuru revenue village, Mellacheruvu Mandal of Nalgonda District. The case of the plaintiff is that she purchased the suit schedule property under an unregistered sale deed from one Chakali Venkatappaiah. The case of the defendants is that by the time of filing of the suit, the third defendant was in possession and enjoyment of the suit schedule property and he sold the suit schedule property to the wife of first defendant. For one reason or other, the plaintiff did not produce the unregistered sale deed, which is the source of her title. As per Ex.A2 pahani, one Chakali Venkatappaiah is in possession of an extent of Ac.18.24 guntas in Survey No.1060/1. In each pahani, the survey number is shown differently. As per the recitals of Exs.A5 to A11, the defendants are having Ac.1.00 of land in Survey No.1060/10. During the course of trial, the plaintiff introduced a new case that she owned an extent of Ac.3.21 guntas in Survey No.1060/1 and the same was mortgaged with Co-operative Bank. Except the oral testimony of P.W.5, there is no other convincing evidence to substantiate the same. In her evidence, P.W.1

deposed that the land of P.W.4 is intervening between the suit schedule property and an extent of Ac.2-00 belongs to her. In the schedule, the name of P.W.4 is not shown as one of the neighbouring land owner. The version put forth by the plaintiff in her chief examination is not supported by any convincing evidence. The trial Court simply referred documents of both parties and decreed the suit. The finding of the trial Court that the defendants manipulated revenue record to defraud the plaintiff is not based on legally admissible evidence. The trial Court has not given specific finding that the plaintiff has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. It is needless to say that the court cannot grant perpetual injunction in favour of the plaintiff without recording a specific finding that the plaintiff was in possession of the property as on the date of filing of the suit. Viewed from any angle, the judgment passed by the trial Court is not sustainable either on facts or in law.

11. As per surveyor report the plaintiff was not in possession of suit schedule property. The first appellate Court has considered the oral and documentary evidence in right perspective and arrived at a conclusion that the plaintiff filed the suit seeking perpetual injunction by suppressing material facts. The appellate Court also made an observation that the plaintiff has not mentioned the correct boundaries of the suit schedule property. It is needless to say that a party, who approached the court, has to establish his case. A duty is cast upon the plaintiff to establish that she was in possession of the property as on the date of filing of the suit in order to seek the relief of perpetual injunction. The documents produced by the 3rd defendant negate the contention of the plaintiff. The findings recorded by the

first appellate Court are supported by oral and documentary evidence. I am fully agreeing with the findings recorded by the first appellate Court. Viewed from any angle I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the first appellate Court are perverse.

12. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, 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. ...

13. 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.

14. 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

16th November, 2017
Rns

¹ (2010) 13 SCC 216

