

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

S.A.No.961 of 2016

JUDGMENT:

This Second Appeal is filed challenging the judgment and decree dt.29.02.2016 in A.S.No.181 of 2012 of the Additional District Judge, Narsapur reversing the judgment and decree dt.04.06.2012 in O.S. No.176 of 2006 of the Senior Civil Judge, Narsapur.

2. The 2nd appellant and the deceased-1st appellant were plaintiffs in the above suit. They filed the suit for perpetual injunction against the respondents in respect of Ac.0.65 cents of vacant site in R.S.No.174/1 & 2 of Chuttuvari village, Narsapur Mandal.

3. It is the case of the appellants that the plaint schedule property belongs to the paternal grand father of the 1st appellant by name Dolla Venkadu, and on his death, it devolved on the father of the 1st appellant, who also died 30 years prior to the suit. Thereafter, it devolved on the 1st appellant. The appellants claimed to be in possession and enjoyment of the plaint schedule property and that in 1986, they reconstructed in the place of thatched house, a pucca house for the benefit of the 2nd appellant and another son by name Prasad and house tax was being paid thereon.

4. The appellants allege that dispute arose between the 1st appellant and the 1st respondent with regard to the pathway situated by the side of the plaint schedule property, that a settlement of the said dispute took place before Mythri Sangam and a letter was also

executed by both parties in the presence of elders, but the 3rd respondent entertained a desire to grab the plaint schedule property forcing the appellants to file the suit. They allege that the respondents, who do not have any right over the plaint schedule property, were proclaiming in the village that they would trespass into the plaint schedule property by dispossessing the 1st appellant.

5. Written statement was filed by the respondents denying that the 1st appellant was the owner of the plaint schedule property or that the appellants were in possession of the plaint schedule property. It is contended that there was no tiled house in the plaint schedule property and the appellants were trying to mislead by filing tax receipts paid to some other house but not to the plaint schedule property. It is contended that the R.S. numbers given by the appellants were not correct, that they do not belong to the subject property and the boundaries are also different from that of the respondents. They contend that the suit schedule site is allegedly covered by R.S.No.174/1 & 2, while the respondents' property of an extent of Ac.0.24 ½ cents is situated in R.S.No.211. It is stated that the 1st appellant did not know where his grand father's land was located and while the respondents' land is vacant land, the 1st appellant mentioned that it is a tiled house and it appears that the appellants do not know about the location of the suit schedule land and the suit itself is speculative suit. It was also specifically denied

that the appellants and his sons were not in possession of the plaint schedule property. It was also stated that the Mythri Sangam and village elders did not settle any pathway dispute between the 1st appellant and the respondents. It was stated that the 1st appellant got issued a legal notice on 31.08.2005 to respondent Nos.2 and 3 and others with false and baseless allegations, that a reply to the same could not be given immediately, but later it was given on 12.06.2006. It was further stated that the 1st respondent purchased the plaint schedule property on 20.07.2005 from the 3rd respondent and others under a registered sale deed even before the 1st appellant got issued notice on 31.08.2005 and that the 1st respondent cut the bushes in the plaint schedule property and reclaimed it.

6. The trial Court framed the following issues:

- a) Whether the plaintiffs are entitled for grant of permanent injunction as prayed for?
- b) To what relief?

7. Before the trial Court, the appellants examined the 1st appellant as P.W.1 and marked Exs.A-1 to A-13. The respondents examined the 1st respondent as D.W.1 and marked Exs.B-1 to B-6.

8. By judgment and decree dt.04-06-2012, the trial Court decreed the suit with costs. It held that in the reply notice Ex.A-8, got issued by the respondents to the appellants in response to Ex.A-1 legal notice, it was not stated by the respondents that the plaint schedule

property was not in existence or that the appellants were claiming land of the respondents by showing wrong boundaries. It held that in Ex.A-8, the respondents merely stated that they purchased nearly Ac.0.24 ½ cts out of the schedule property and have been in possession thereof as per Ex.B-1 sale deed dt.20-07-2005, and therefore the plea taken in the Written Statement that survey number and boundaries of the plaint schedule property are not correct, cannot be accepted. It held that the 1st respondent admitted that the father's name of the 1st appellant was Patteyya and the plaint schedule property was inherited by the 1st appellant and D.W.1, and the 3rd respondent also admitted in his cross examination that 1st appellant had inherited the plaint schedule property. It then went on to consider the question whether the 1st respondent had purchased Ac.0.24 ½ cts and whether the 1st respondent is in possession and enjoyment over that property and held that the land claimed to have been purchased by the 1st respondent was located in R.S.No.211 as per Ex.B-1 and it was not in R.S.No.174/1 and 2. After referring to 1st respondent's evidence that the plaint schedule property is different from the extent of Ac.0.62 cts in R.S.No.211 which is situated at northern side property and it was purchased by his wife, the Court opined that the evidence of 1st respondent shows that he did not deny that the schedule property was not in existence and that the property purchased by his wife under Ex.B-1, was different. It held that the respondent had admitted that the plaint schedule property is different from the property covered by Ex.B-1 and no hardship would be

caused to the respondents if permanent injunction in respect of the plaint schedule property is granted to the appellants, particularly, when the appellants had established their possession of the plaint schedule property by producing Exs.A-4 to A-6 tax receipts, Ex.A-9 original Andhra Bank Passbook of 1st appellant, Ex.A-10 copy of pension pass book of 1st appellant and Ex.A-11 copy of ration card of 1st appellant. It also held that the appellants' contention that there was a house in the schedule property and they were in vacant possession of the same, is correct.

9. The respondents questioned the same in appeal. The appellate Court however reversed the said findings by its judgment and decree dt.29-02-2016. The first appellate Court held that the appellants have not proved title and possession, that P.W.1 himself stated that the plaint schedule property is a vacant site and the appellants having approached the Court must succeed on the strength of their own case and establish their possession and they cannot take advantage of the weakness of the case of the respondents.

10. Assailing the said judgment, this Second Appeal is filed by the appellants.

11. Learned counsel for the appellants contended that pending the 1st appeal, the 1st appellant died and though I.A.No.346 of 2015 was filed to bring on record one Dolla Prasad as legal representative of the deceased-1st appellant, that application was not

pursued. This contention has no merit since the 2nd appellant is the son of 1st appellant on record and the estate of the 1st appellant was sufficiently represented. So non impleadment of the other son of the deceased 1st appellant does not lead to abatement of the appeal. Even though the said I.A. was not pursued by the respondents in A.S.No.181 of 2012, no prejudice is caused to them.

12. That apart, the learned counsel for the appellant also contended that it was incumbent on the part of the first appellate Court to give independent findings after discussing the evidence adduced in the trial Court in view of the order 41 Rule 31 CPC and that the first appellate Court failed to consider the evidence adduced in the trial Court.

13. It is true that the judgment of the lower appellate Court is not as elaborate as that of the trial Court. But the lower appellate Court was right in stating that the burden is on the appellant to establish his possession of the plaint schedule property and that they cannot rely upon the weakness of the case of the respondents. In support of their plea that they are in possession of the property, the appellants had filed Ex.A-1 to A-13, of whom, Ex.A-4 to A-6 were tax receipts issued for assessment No.504 and 504/A in favour of the appellants, Ex.A-9 is the original Andhra Bank Passbook of 1st appellant, Ex.A-1, copy of the Pension Passbook of 1st appellant and Ex.A-11 is the copy of the Ration Card of 1st appellant.

14. It is settled law that tax receipts are not evidence of possession. Also bank pass books, pension pass book and ration card also cannot be treated as evidence of possession of the plaint schedule property by the appellants. The appellants had not examined any neighbours or revenue officials or marked any revenue record which establishes their possession of the plaint schedule site.

15. Also when a specific contention was raised by the respondents that the survey numbers given for the plaint schedule property by the appellants are not correct, it was incumbent on the part of the appellants to adduce independent evidence to establish the fact that the survey numbers mentioned by them actually relate to the plaint schedule, but they have failed to do.

16. The trial Court unfortunately did not look at the claim of the appellants in this perspective and went into the truthfulness or otherwise of the evidence adduced on behalf of the respondents ignoring the fundamental principle of law that the appellants who seek injunction must establish their possession and they cannot rely upon the weakness of the case of the respondents. The lower appellate Court referred to the evidence of P.W.1 and in particular his evidence that it is a vacant site contradicting the plaint plea that there is a house property therein.

17. Therefore, I am of the opinion that the view expressed by the lower appellate Court cannot be found fault with on the ground

that the entire evidence on record was not elaborately considered by it. No substantial question of law arises for consideration in the Second Appeal and it is accordingly dismissed. No costs.

18. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-01-2017
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