

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.631 of 2016

JUDGMENT:

This Second Appeal is preferred by the appellant/plaintiff aggrieved by the judgment and decree dated 25.01.2016 in A.S.No.63 of 2012 passed by the Principal District Judge, Ranga Reddy District at L.B.Nagar, dismissing the appeal by confirming the judgment in O.S.No.1268 of 2003 passed by the II Additional Junior Civil Judge, Ranga Reddy District, dismissing the suit for perpetual injunction.

2) The parties in this appeal are referred as they were arrayed before the Trial Court.

3) The facts in nutshell are thus:

a) The case of the plaintiff is that he was the owner and possessor of plot No.35 admeasuring 258 sq.yards in Sy.No.57 part situated at Karmanghat Village, purchased from Mohd. Jahangir S/o. Mohd. Hussain under an agreement of sale dated 19.12.1994 for Rs.1,29,000/-. Originally Mohd. Jahangir, was the absolute owner, pattedar and possessor of land in Sy.No.57 admeasuring Ac.8-20 gts and he entered into an agreement of sale with M/s. Mallikarjuna Co-operative Housing Society Limited and the said society made out house plots and allotted to its members. As the society failed to pay the entire sale consideration, disputes arose between them and society filed O.S.No.517/1986 for perpetual injunction against Mohd. Jahangir and compromise was

effected on payment of post dated cheques by the said society. Mohd. Jahangir presented those cheques in the bank and they were dishonored. Thereafter, the said society and Mohd. Jahangir entered into a memorandum of agreement-cum-settlement dated 26.08.1994, wherein the society agreed to give the 11 plots bearing Nos.71, 72, 73, 34, 35, 81, 82, 100, 104, 15 & 16 totally admeasuring 2733 sq.yards in Sy.No.57 part of Karmanghat village and accordingly, handed over the said plots to Jahangir. It is further contended that the suit property was kept open and the defendant, who had no right or title, tried to occupy the same.

Hence, the suit.

b) Defendant filed written statement contending that suit for perpetual injunction was not maintainable basing on the agreement of sale. She denied that society handed over 11 plots including the suit plot to Mohd. Jahangir and said Mohd. Jahangir is not competent to sell the suit plot to plaintiff. She submitted that society allotted suit plot to D.Sita Ramaiah, who in turn sold the suit plot to V.Gangadhar Rao, husband of the defendant under registered sale deed bearing No.12709/1993 dated 06.11.1993 and since then she and her husband were in continuous possession over the suit plot and when they tried to construct compound wall on 02.08.2003, plaintiff obstructed the same. Thus the defendant prayed to dismiss the suit.

c) Basing on the above pleadings, the Trial Court framed the following issues:

i) Whether the plaintiff is in possession of suit schedule property?

ii) Whether the plaintiff is entitled for perpetual injunction as prayed for?

iii) To what relief?

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of plaintiff. DWs.1 to 3 were examined and Exs.B1 to B7 were marked on behalf of defendant.

e) After hearing both sides and basing on the oral and documentary evidence, the Trial Court dismissed the suit on the observation that plaintiff was not in possession of the suit schedule property.

f) Aggrieved, the plaintiff preferred A.S.No.63 of 2012 wherein the lower appellate Court dismissed the appeal by confirming the judgment and decree of the Trial Court.

Hence, the instant Second Appeal by plaintiff.

4) Heard Sri S.R.Sanjeev Kumar, learned counsel for appellant and Sri B.Nalin Kumar, learned counsel for respondent regarding involvement of substantial questions of law for admission of appeal.

5) In a suit for perpetual injunction, it is needless to emphasize that plaintiff has to establish his lawful possession over the suit schedule property as on the date of suit to deserve for a decree. The plaintiff cannot rely upon the weakness of the defendant's case in this regard. Keeping the above principle in mind, it has now to be seen, whether plaintiff could establish his case before the Courts below and whether the

judgments of the Courts below suffer any illegality or perversity and whether there exists any substantial question of law as projected by the plaintiff to entertain this Second Appeal.

6) The specific case of the plaintiff is that one Mohd. Jahangir was the original owner of Ac.8.20 gts. in Sy.No.57 and M/s.Mallikarjuna Cooperative Housing Society obtained an agreement to sell from the said Mohd. Jahangir and when he failed to honour the terms of the agreement, it (Society) filed suit—O.S.No.517 of 1986 against said Mohd. Jahangir for relief of perpetual injunction and the said suit was compromised and in terms of the said compromise the society agreed to give 9 plots and cash of Rs.6 lakhs to the said Mohd. Jahangir and towards payment of Rs.6 lakhs the society issued two postdated cheques which were bounced when presented. Thereby disputes arose between Mohd. Jahangir and M/s.Mallikarjuna Co-operative Housing Society which were amicably resolved by them. As a result, they entered into settlement in the form of Memorandum of agreement-cum-settlement dated 26.08.1994 wherein the society agreed to give 11 plots bearing Nos.71, 72, 73, 34, 35, 81, 82, 100, 104, 15 and 16 in lieu of outstanding amount. Accordingly, the society handed over those plots to Mohd. Jahangir and thereby he became the owner of those plots. The further case of the plaintiff is that the plaintiff purchased plot No.35 from Mohd. Jahangir under Ex.A1—agreement to sell dated 19.12.1994 for Rs.1,29,000/- by paying the entire sale consideration.

7) Both the Courts below have observed that the plaintiff has not produced the so-called memorandum of agreement dated 26.08.1994 said

to have been entered into by his vendor with M/s.Mallikarjuna Cooperative Housing Society whereunder the suit plot along with other plots was said to be allotted to plaintiff's vendor. They also observed that plaintiff filed only Exs.A1 to A5 which do not prove his title and possession over the suit property. On the other hand, defendant produced Ex.B1—sale deed to prove her title and possession over the suit plot. One of the arguments put-forth by the plaintiff before the lower appellate Court was that since Ex.B7 was not a registered sale deed, title cannot be said to have been conveyed in favour of DW3—Seetharamaiah and thereby he cannot sold the suit property to the defendant. The lower Appellate Court observed that though Ex.B7 was only an agreement of sale but recitals prove the possession of DW3 and he executed registered sale deed in favour of defendant's husband—Gangadhar Rao under Ex.B1. The Court observed that it was for the plaintiff to establish his case more than the defendant.

8) I have gone through the judgments of the Courts below. As already observed supra, it is for the plaintiff to establish his legal title and possession over the suit property by the date of suit but the plaintiff miserably failed to establish the same. The documents produced by him do not establish the title of his vendor in plot No.35 as the plaintiff for the reasons best known to him failed to produce so-called agreement dated 26.08.1994 between his vendor and M/s.Mallikarjuna Co-operative Housing Society. In the absence of such document, Ex.A1 will not have any probative value. Therefore, the judgments of the Courts below cannot be termed as either illegal or perverse. On the question of facts,

both the Courts below held plaintiff failed to establish his title and possession as such I find no question of law, muchless substantial question of law to be determined in the Second Appeal. The questions projected in the grounds of appeal, in my considered view, do not amount to substantial question of law. Therefore, the Second Appeal is dismissed at the admission stage.

U. DURGA PRASAD RAO, J

Date: 26.02.2018

Scs/Murthy

