

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.1095 OF 2004

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment and decree dated 15.06.2004 passed in A.S. No.159 of 2000 on the file of the V Additional District Judge (Fast Track Court), Guntur (for short, 'first appellate court'), wherein the first appellate court confirmed the judgment and decree dated 31.07.2000 passed in O.S. No.1079 of 1997 on the file of the II Additional Junior Civil Judge, Guntur (for short, 'the trial court'). The original suit was filed by the appellant-plaintiff for permanent injunction restraining the defendant and his men from in any way interfering with her peaceful possession and enjoyment of the suit schedule property. During pendency of the second appeal, the respondent-defendant died and respondents 2 to 4 are added as legal representatives of the respondent-defendant, vide order dated 10.02.2010 in C.M.P. No.118 of 2010.

2. Heard the learned counsel for the appellant-plaintiff and the learned counsel for the respondents-defendants, apart from perusing the material available on record.

3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court.

4. Learned counsel for the appellant-plaintiff would contend that the plaintiff is in possession of the suit schedule property; in support of her contention, she filed Ex.A.1-photostat copy of ration card, which clearly demonstrates her possession; originally, the suit schedule property was the self-acquired property of the plaintiff's father-in-law; the defendant has no manner of right whatsoever over the suit schedule property; the trial Court erroneously dismissed the suit filed by the plaintiff and the same was confirmed by the first

appellate court erroneously without appreciating the oral and documentary evidence adduced by the plaintiff; the findings recorded by the trial Court as well as the first appellate court are perverse; and ultimately, prayed to allow the second appeal as prayed for.

5. On the other hand, learned counsel for the respondents-defendants would contend that the defendant purchased the suit schedule property under Ex.B.1-sale deed dated 21.01.1989 and he has been paying tax and Ex.B.2 is the tax receipt in respect of the suit schedule property; both the Courts below rightly dismissed the suit filed by the plaintiff; there are no grounds to interfere with the findings of the Courts below; no substantial questions of law do arise for determination in this second appeal; and ultimately, prayed to dismiss the second appeal.

6. While admitting this second appeal on 17.09.2004, this Court framed the following substantial questions of law for determination:

(a) Whether the relief of permanent injunction be granted basing on the possession of the property not withstanding the title of the property?

(b) Whether the defendant in a suit filed for grant of injunction in respect of immovable property be granted relief of a direction that the plaintiff is not entitled to continue in possession of the schedule property?

(c) Whether both the courts below are justified in declaring the title of the defendant in respect of the suit schedule property in a suit filed for grant of permanent injunction especially when the possession of the plaintiff was admitted by the defendant?

7. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the relevant pleadings of the parties.

(a) The plaintiff filed the original suit for grant of permanent injunction restraining the defendant and his men from interfering with her peaceful possession and enjoyment over the suit schedule property in any manner whatsoever. The plaintiff contended that she is the wife of one Rajaram Bhaskar Rao. One Rupakula Lakshminarayana was the father of Rajaram Bhaskar Rao and father-in-law of the plaintiff. The said Lakshminarayana acquired the suit schedule property from out of the ancestral property and he had three sons. During the lifetime of the said Lakshminarayana, he and his sons partitioned their ancestral property under oral partition and the suit schedule property fell to the share of the plaintiff's husband, who is the eldest son of Lakshminarayana. He left the house more than seven years ago and his whereabouts are not known. Since then, the plaintiff is residing in the suit schedule property along with her children. A portion of the house was damaged and the plaintiff constructed the house by spending Rs.50,000/- in the year 1996. The defendant is a stranger to the family of the plaintiff and he has been trying to dispossess the plaintiff from the suit schedule property forcibly with a view to grab the property taking advantage of the helpless condition of the plaintiff.

(b) The defendant filed written statement denying all the averments made in the plaint and contended that one Rupakula Lakshminarayana has put up the suit schedule property, which is a vacant site, for sale and the defendant purchased the said property under Ex.B.1-registered sale deed dated 21.01.1989 for a valid consideration of Rs.47,000/-. The said property was the self-acquired property of Lakshminarayana and as such his sons have no right to question the alienation made during his lifetime. The said Lakshminarayana worked in the industrial unit of the defendant and the defendant constructed a house in the suit schedule site and on humanitarian grounds, the defendant permitted the plaintiff and her family members to reside in the said house. The plaintiff has no manner of right whatsoever in the suit schedule property. As the defendant is the owner

of the suit schedule property, the question of his trying to dispossess the plaintiff with a view to grab or encroach into the property does not arise.

(c) Basing on the pleadings, the trial Court framed the following issues:

1) Whether the plaintiff is entitled to permanent injunction as prayed for?

2) To what relief?

(d) Basing the evidence of P.Ws.1 and 2 and Ex.A.1-photostat copy of ration card marked on behalf of the plaintiff and the evidence of D.Ws.1 and 2 and the documents Exs.B.1 and B.2 marked on behalf of the defendant, the trial Court dismissed the suit filed by the plaintiff, vide judgment and decree dated 31.07.2000, holding that the plaintiff is not entitled to any injunction as she failed to prove her possession over the suit schedule property. Aggrieved by the said judgment and decree of the trial Court, the plaintiff preferred A.S. No.159 of 2000 and the first appellate court, after appreciating the evidence on record, vide decree and judgment dated 15.06.2004, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Questioning the said judgment and decree passed by the first appellate court, the plaintiff filed this second appeal.

8. In view of the contentions of both sides, the only point that arises for determination is, whether the concurrent findings of both the Courts below are liable to be set aside?

9. There cannot be any dispute that under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word

‘substantial’ as qualifying ‘question of law’, means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse findings are some of the questions, which involve substantial questions of law.

10. While dealing with the subject matter, both the Courts have dealt with the evidence of P.Ws.1 and 2 and Ex.A.1-photostat copy of ration card marked on behalf of the plaintiff and the evidence of D.Ws.1 and 2 and documents Ex.B.1-sale deed dated 21.01.1989 and Ex.B.2-tax receipt dated 01.04.1997 marked on behalf of the defendant. Though the plaintiff contended that the suit schedule property is her ancestral property, there is no single document to substantiate the same. As per the evidence of D.Ws.1 and 2 and Ex.B.1-sale deed dated 21.01.1989, the suit schedule property is in ownership and possession of the defendant. Ex.B.2 is the tax payment receipt in respect of the suit schedule house bearing D.No.25-18-87/A, which clearly establishes the ownership of the defendant over the suit schedule house. Both the Courts below while dealing with the subject matter, held that no injunction can be granted against the true owner. The substantial question relate to the entitlement of the permanent injunction in favour of the plaintiff against the defendant in respect of the suit schedule property. Both the Courts have dealt with all the factual aspects and held that no injunction can be granted against the true owner and declined to grant the relief sought by the plaintiff. Both the Courts did not record

any erroneous findings. The findings of both the Courts are based on evidence and record.

11. It is appropriate to state that under Section 100 of the C.P.C., the jurisdiction of the High Court to interfere with the judgment of the Courts below is confined to substantial question of law. The findings recorded with regard to the factual aspects by the first appellate court are final. Those findings of facts are not amenable to the jurisdiction of this Court by way of second appeal. The first appellate court had elaborately dealt with regard to the ownership of the defendant over the suit schedule property. In the circumstances of the case, this Court cannot re-appreciate the evidence and arrive at a different conclusion. Neither inadmissible evidence has been considered nor admissible evidence not acted upon. Viewing from any angle, no question of law much less substantial question of law does arise for determination in this second appeal. Therefore, this second appeal is devoid of merit and is liable to be dismissed.

12. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 15.06.2004 passed in A.S. No.159 of 2000 on the file of the V Additional District Judge (Fast Track Court), Guntur. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 18.09.2018
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Dr. SHAMEEM AKTHER, J