

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.719 OF 2004

JUDGMENT:

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C'), is filed by the unsuccessful appellants-defendants aggrieved by the judgment and decree, dated 29.08.2003, in A.S.No.64 of 1999 passed by the III Additional District Judge (Fast Track Court), Anantapur, whereunder, the judgment and decree, dated 15.09.1999, in O.S.No.99 of 1989 passed by the Principal Junior Civil Judge, Anantapur, were confirmed.

2. The parties are hereinafter referred to, as they were arrayed in the Original Suit.

3. The Second Appeal was admitted on the following substantial questions of law for admission of the appeal:

“(a) Whether the Courts below are justified in decreeing the suit of the plaintiff, when their vendors had no subsisting right in the schedule property.

(b) Whether the Judgment of the Courts below suffer from vice of perverse findings of facts.

(c) Whether the Courts below are justified in decreeing the suit, when the plaintiff and their vendors had no manner of right over the schedule property.”

4. Learned counsel for the appellants-defendants would contend that the findings of both the Courts below are perverse, contrary to law and facts; that the Courts below failed to consider the evidence adduced on behalf the defendants in proper perspective; that the plaintiff's vendors have no right to alienate the suit schedule property; that the plaintiff has no right, title or

possession over the suit schedule property and that both the Courts below ought to have considered Ex.B.15-Exchange Agreement, dated 19.02.1965, and ultimately prayed to set aside the impugned judgment.

5. Learned counsel appearing for the plaintiff-respondent would contend that all the points involved in the instant case are factual aspects; that the suit filed by the plaintiff for declaration of title and perpetual junction was decreed by the trial Court, as the plaintiff has proved right, title and possession over the suit schedule property; that the said judgment was confirmed by the first appellate Court; and that there are no other circumstances to interfere with the findings of both the Courts below and ultimately prayed to dismiss the appeal. He placed reliance on a decision reported in **Dagadabai (Dead) by L.Rs. v. Abbas @ Gulab Rustum Pinjari**¹.

6. In view of the submissions made by both parties, the point for determination is whether the judgments and decrees passed by the trial Court as well as appellate Court are liable to be set aside?

7. While dealing with the subject matter of the suit, the trial Court framed the following issues for trial:

- “1. Whether the plaintiff is the owner of the plaintiff schedule property and she is in possession of the same at the time of filing of the suit?
2. Whether the sale deed dt.16-6-1982 in favour of Bala Nagamma is genuine and valid one?
3. Whether the plaintiff has perfected her title by adverse possession?

¹ 2017 (3) ALT 17 (SC)

4. Whether the suit is bad for non-joinder of necessary parties?
5. Whether the plaintiff is entitled for declaration and injunction as prayed for?
6. To what relief?"

8. While dealing with the subject matter of the appeal, the first appellate Court elaborately dealt with the issues framed by the trial Court and ultimately confirmed the judgment and decree of the trial Court.

9. To prove the title over the property, the plaintiff herself examined as P.W.1 and also examined P.W.2-Ramachandra Reddy and got marked Ex.A.1-Partition Deed (Registration copy), dated 29.05.1939, Ex.A.2-Registration copy of sale deed, dated 01.11.1955, Ex.A.3-Registered sale deed executed by P.Obireddy in favour of Bala Nagamma, dated 16.6.1982, Ex.A.4-Registered Sale deed executed by P.Balanagamma in favour of M.Ramadevi (P.W.1), dt.08.05.1987, Ex.A5-Pattadar passbook, Ex.A.6-Certified copy of 10 (1) Account Extract, Ex.A.7-Certified Copy of No.2 Account, Ex.A.8-Copy of 10 (1) Account, Ex.A.9-Cist receipt, Ex.A.10-Cist receipt and Ex.A11-Cist receipt.

10. While refuting the case of the plaintiff, the 1st defendant examined himself as D.W.1 and examined D.W.2-P.Sanjeevareddy, D.W.3-P.Pulla Reddy and D.W.4-Nadipi Narayanareddy and got marked Ex.B.1-Registered Partition deed, dated 29.05.1939, Ex.B.2-Registration copy of the Gift Deed, dated 25.09.1962, Ex.B.3-Registered Sale Deed, dated 12.01.1970, Ex.B.4-Registered Sale deed, dated 27.01.1987, Ex.B.5-Pattadar Passbook, Ex.B.6-proceedings of the Special .Deputy Tahsildar, dated 10.01.1983,

Ex.B.7-10 (1) Account extract, Ex.B.8-Cist receipt, Ex.B.9-Cist receipt, Ex.B.10-Cist receipt, Ex.B.11-Cist receipt, Ex.B.12-No.2 Adangal extract for fasli 1382 to 1399, Ex.B.13-Tax Receipt, Ex.B.14-Tax Receipt and Ex.B.15-Exchange agreement, dated 19.02.1965.

11. Placing reliance on both oral and documentary evidence, the Courts below held that the plaintiff is entitled for declaration of title and perpetual injunction and accordingly decreed the suit.

12. As per the written statement filed by the defendants in the year 1989, the defendants are in possession of Ac.11-40 cents and they are sons of one Poola Chinnapareddy. But, there is no mention in the written statement how the said Chinnapareddy has got exclusive right over of the subject property. After 10 years of filing of the written statement, the defendants amended and inserted para 10 (a) in the written statement, wherein they contended that the said Chinnapareddy become owner by virtue of Exchange Agreement marked as Ex.B.15. This document is insufficiently stamped and no deficit stamp duty and penalty was paid. The recitals in Ex.B.15 are to the effect of Exchange of agreement. Both the Courts below have assigned reason that Ex.B.15 is a fabricated document and it cannot acted upon. As per Exs.A.1 to A.6, it is clear that there is a clear flow of title in favour of the plaintiff, and the other documents i.e., Exs.A.7 to A.11 also reveal possession of plaintiff as well as her vendors' vendor. The defendants failed to file any document to prove that they had right or title over the subject property. In the absence of any document, the concurrent findings of fact recorded by the

Courts below do not warrant interference of this Court. In view of that, it cannot be said that the findings of both the Courts below are perverse. The substantial questions of law raised in the Second Appeal are not at all the substantial questions of law as enumerated under Section 100 CPC. There are concurrent findings with regard to decreeing of the suit in favour of the plaintiff and against the defendants.

13. In view of the facts and circumstances of the case, this Court is of the opinion that in the Second Appeal there are no questions of law much less a substantial question of law within the meaning of Section 100 CPC to interfere by this Court considering the submissions made on behalf of the appellants and reverse the findings of both the Courts below. In the circumstances of the case, the Courts below rightly held that the plaintiff is entitled for declaration of title and perpetual injunction in respect of suit schedule property against the defendants. The Second Appeal is devoid of merit and is liable to be dismissed.

14. Accordingly, the Second Appeal is dismissed confirming the judgment dated, 29.08.2003, in A.S.No.64 of 1999 passed by the III Additional District Judge (Fast Track Court), Anantapur. Miscellaneous petitions, if any pending in this appeal shall stand closed. There shall be no order as to costs.

DR.SHAMEEM AKTHER, J

JULY 9, 2018
YVL

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER



SECOND APPEAL No.719 OF 2004

Date:09.07.2018