

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

SECOND APPEAL No.432 of 2018

JUDGMENT:

Heard Smt.V.Dyumani, learned counsel for the appellant.

Plaintiff, in O.S.No.166 of 2008, on the file of the Court of the Principal Junior Civil Judge, Dhone, is the appellant in the present Second Appeal, preferred under Section 100 of the Code of Civil Procedure.

Appellant herein instituted the said suit for mandatory injunction to direct the defendants to demolish 'DEFG' portion constructed house basement walls within a specified period and to declare the plaintiff's title and possession over 'DEFG' portion of the schedule property and for costs.

The defendants resisted the said suit by way of filing written statement. The learned Principal Junior Civil Judge, Dhone, on the basis of the pleadings available on record, framed the following issues for consideration:

1. *Whether the plaintiff is entitled for mandatory injunction as prayed for?*
2. *Whether the plaintiff is entitled for declaration of title and possession of 'DEFG' portion of the suit schedule property?*
3. *To what relief?*

During the course of trial, plaintiff-appellant examined herself as P.W.1 and also examined P.Ws.2 and 3 on her behalf and filed Exs.A1 to A5. On behalf of the defendants, first defendant-first respondent herein examined himself as D.W.1 and also examined D.Ws.2 and 3 and marked Exs.B1 to B5.

The learned Principal Junior Civil Judge, by way of the judgment and decree, dated 26.08.2011, dismissed the suit. Aggrieved by the said judgment and decree, plaintiff-appellant herein preferred A.S.No.84 of 2011 on the file of the Court of the I Additional District Judge, Kurnool, under Section 96 of the Code of Civil Procedure. The learned appellate Judge framed the following points for consideration:

1. *Whether husband of P.W.1 can be considered as ostensible owner? If so, D1 is a bonafide purchaser for value and the said sale deed is binding on the plaintiff?*
2. *Whether the suit is barred by time?*
3. *Relief?*

Eventually, by way of judgment and decree, dated 26.10.2017, the learned I Additional District Judge, Kurnool dismissed the said Appeal Suit, confirming the judgment and decree rendered by the trial Court. The present Second Appeal is directed against the said judgments and decrees rendered by the trial Court and the lower appellate Court.

It is contended by the learned counsel for the appellant that the judgments rendered by the Courts below, dismissing the suit instituted by the appellant herein, are erroneous and contrary to law. In elaboration, it is further contended that the trial Court and the lower appellate Court failed to consider the effect of Section 48 of the Transfer of Property Act, 1882 (for brevity, 'the Act') and the judgments impugned are also not in conformity with Order XLI Rule 31 CPC.

As per the material available on record, it is very much clear that, by way of Ex.A1-registered sale deed, dated 11.02.1991, the husband of the plaintiff-appellant herein purchased an extent of Ac.0.08 cents of land in Sy.No.470/2C2 of Kocheruvu village of Dhone, Kurnool District. It is not in dispute that, by way of Ex.B1-registered sale deed, the husband of the plaintiff sold an extent of Ac.0.02½ cents, which is equivalent to 121 sq.yards. It is also not in dispute that the husband of the plaintiff also sold an extent of Ac.0.01 cents out of the above said property. The material on record further discloses that the second defendant in the suit entered into a compromise with the plaintiff and did not contest the suit.

The Courts below categorically found fault with the plaintiff that she did not examine her husband, when the fact remains that they are living together in the same house. The lower appellate Court, on the point of limitation, held in favour of the plaintiff and, by relying upon the provisions of Section 41 of the Act and the judgments of the various Courts, categorically held against the plaintiff. Coming to the contention as regards the effect of Section 48 of the Act, it is very much evident from the material available on record that the plaintiff never raised this issue either before the trial Court or before the lower appellate Court. Such a contention, for the first time, in the present Second Appeal, cannot be raised. It never fell for consideration either before the trial Court or before the appellate Court.

In view of the categorical findings of the lower appellate Court and the points framed and, in view of the meticulous consideration on various aspects by the Courts below, this Court, in the absence of question of law, muchless substantial question of law, is not inclined to admit the present Second Appeal.

Accordingly, the Second Appeal is dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions pending, if any,
shall stand closed.

15th June, 2018
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A.V.SESHA SAI,J

