

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.351 of 2015

JUDGMENT:

Defendant Nos.1 to 3 are appellants in the present Second Appeal laid, under Section 100 of Code of Civil Procedure, 1908 (for short 'CPC').

2. Aggrieved over the judgment and decree dated 06.04.2015, in A.S. No.46 of 2008, passed by the learned Special Judge for trial of offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act - cum - VI Additional Metropolitan Sessions Judge - cum - XX Additional Chief Judge, Secunderabad, whereby and whereunder, the said appeal suit was allowed in part confirming the judgment and decree dated 17.01.2008, in O.S. No.515 of 2002, passed by the learned XIII Additional Senior Civil Judge (Fast Track Court), City Civil Court, Secunderabad, whereby and whereunder, the suit was decreed for recovery of possession of the suit schedule property and also directing defendant Nos.1 to 3 to pay to the plaintiffs and defendant No.4, a sum of Rs.13,688/- towards costs of the suit and also ordering that the plaintiffs are entitled to claim *mesne* profits from the date of suit till possession is delivered, but quantum to be decided on a separate petition to be filed for that purpose.

3. The learned lower appellate Court modified the decree passed by the trial Court allowing the appeal suit in part dismissing the suit of the plaintiffs with regard to eviction and directing the

defendants to pay *mesne* profits from the date of suit till 19.09.2009 to the plaintiffs and also ordering that plaintiff No.2 is entitled to 1/6th share in the *mesne* profits.

4. Heard Sri Sharad Sanghi, learned counsel for the appellants (defendant Nos.1 to 3), and Sri Mohd. Imran Khan, learned counsel for respondent No.2 (plaintiff No.2), and perused the material on record.

5. The only submission of the learned counsel for the appellants is that, though, in the lease deed executed afresh pursuant to the registered partition deed amongst the plaintiffs allotting the suit schedule property to the plaintiffs excluding plaintiff No.2, mentioning clearly that there was oral partition on 22.08.2002 and the partition deed dated 19.09.2009, which deed was entered into and registered when the first appeal was pending, and the said fact was incorporated in the fresh lease, still, the lower appellate Court awarded 1/6th share to plaintiff No.2 in the *mesne* profits which ought not to have done and according to the learned counsel it constitutes substantial question of law amongst various questions of law that were formulated, in the grounds of appeal.

6. Learned counsel for respondent No2 (plaintiff No.2) would submit that in fact, when the original partition deed was effected on 19.09.2009, the parties never referred to the oral partition dated 22.08.2002, and that the partition deed dated 19.09.2009 was the

actual partition through which partition was effected and respondent No.2 is not a party to the fresh lease deed which was entered into subsequent to the partition deed of 2009 and without his knowledge and consent, fresh lease was entered into and in the partition deed, the suit schedule property fell to the share of other plaintiffs except respondent No.2 (plaintiff No.2) herein and, therefore, mere circumstance that other plaintiffs entered into lease deed by reciting earlier oral partition is no ground when it did not find place in the original partition deed to deprive the plaintiff of his 1/6th share as directed by the learned lower appellate Court.

7. Sri Sharad Sanghi, learned counsel for the appellants, fairly agreed that in the partition deed dated 19.09.2009, the parties have not recited earlier oral partition of 2002. That itself would cut at the root of the question of law formulated in the present second appeal to hold that there is no substantial questions of law that really arises and the judgment and decree passed by the lower appellate Court modifying the decree of the trial Court does not suffer from any patent illegality warranting interference and thus, the judgment and decree of the lower appellate Court under challenge cannot be upset. There is no merit in the present Second Appeal.

8. Therefore, the present Second Appeal is dismissed at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present Second Appeal stand dismissed.

A. SHANKAR NARAYANA, J

February 19, 2018.

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