

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.224 OF 2009

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 dated 21.08.2008 in A.S. No.20 of 2007 on the file of the Senior Civil Judge at Vikarabad, Ranga Reddy District (for short, 'first appellate court'), wherein the first appellate court, while allowing the appeal, set aside the judgment and decree dated 16.04.2007 passed in O.S. No.47 of 1988 on the file of the Junior Civil Judge, Chevella (for short, 'the trial court') and decreed the original suit. The original suit was filed by respondents 1 to 3 herein-plaintiffs for declaration and perpetual injunction in respect of the suit schedule land bearing Sy.No.72/2 admeasuring 0-20 guntas, situated at Chevella village and mandal, Ranga Reddy District.

2. Heard the learned Additional Advocate General appearing for the appellant-1st defendant and the learned counsel for the respondents 1 to 3-plaintiffs, apart from perusing the material on record.

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

4. 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 plaintiffs filed the original suit for declaration and perpetual injunction in respect of land bearing Sy.No.72/2 admeasuring 0-20 guntas, situated at Chevella village and mandal, Ranga Reddy District. The plaintiffs averred that they purchased the suit schedule land from the 2nd defendant through a registered sale deed for a valid consideration and they have been in

continuous possession and enjoyment over the same as absolute owners. Originally, the patta of land was standing in the name of the husband of 2nd defendant and after his death, mutation of patta was granted in the name of the 2nd defendant. The 1st defendant started claiming ownership of the suit schedule land and tried to interfere with the peaceful possession and enjoyment of the plaintiffs stating that the land admeasuring Acs.3-21 guntas forming part of Sy.No.72/2 was acquired by the government under notification issued under Section 1 of the Land Acquisition Act and published in Supplement of Part 1 of the Andhra Pradesh Gazette No.2 dated 12.01.1978 for the purpose of establishing the Agricultural Market Yard. All the proceedings and the notice as required under the Land Acquisition Act have been completed behind the back of the interested parties and as such the said proceedings are illegal. In the Gazette Notification neither the 2nd defendant nor her husband is shown as the pattedar, owner and possessor of land. The person by name Chandra Reddy on whom the notice was served also brought to the notice of the acquisition authorities that he is not the owner of the said land and the same belongs to the 2nd defendant. Thus the 1st defendant cannot acquire any right of ownership or possession in the above said land by virtue of the said acquisition proceedings.

(b) The 2nd defendant remained *ex parte*. The 1st defendant filed written statement denying all the averments made in the plaint and contended that the government has acquired the suit schedule land in the year 1979 itself along with other lands under due process of law and possession of the same was taken over in the same year. The documents that are executed in that land are unenforceable and void documents in the eye of law. The plaintiffs were never in possession over the suit schedule land at any time much less from the year 1981. When the suit schedule land was taken in possession by the government in the year 1979, the question of the 2nd defendant selling and plaintiffs purchasing the said land would not arise. The land under dispute was validly

acquired by the government and supplement was also issued in the name of the 1st defendant in the year 1982 in respect of lands acquired including the suit schedule land under the due process of law in the year 1979. The pattedar D.Chandra Reddy was served with notice and after the following the statutory regulations only, the suit schedule land was validly acquired by the government for establishing the Market Yard at Chevella. The said Chandra Reddy has filed a suit in O.S. No.28 of 1987 before the trial Court and the same is pending trial. The plaintiffs cannot hold the possession as alleged when the land so acquired in the year 1978 and possession was also delivered to the then Secretary of Agricultural Market Committee, Shankerpally under the cover of panchanama dated 19.07.1979. The plaintiffs colluding with the village officers got entered their names illegally in the revenue records and filed the present suit with a mala fide intention to grab the suit schedule land.

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

ISSUES:

- i) Whether the plaintiff is entitled to the declaration to the effect that he is absolute owner and possessor of the land admeasuring 0-20 guntas forming part of Sy.No.72/2?
- ii) Whether the plaintiff is entitled to the perpetual injunction as prayed for?
- iii) Whether the suit is not valued properly and the Court Fee paid is not sufficient?
- iv) To what relief?

(d) The trial Court after considering the evidence adduced and after hearing both sides, dismissed the suit vide judgment and decree dated 30.04.1997. Aggrieved by the said judgment and decree, the plaintiffs preferred A.S. No.13 of 1997 and the same is allowed on 30.06.2003 by the Senior Civil

Judge, Vikarabad. Challenging the said judgment and decree dated 30.06.2003, the 2nd defendant preferred Second Appeal No.1218 of 2003 before this Court and the same is allowed vide judgment dated 20.02.2006 remanding the matter to the trial Court to ascertain as to whether the suit schedule property of 0-20 guntas land in Sy.No.72/2 forms part of the land of Acs.3-21 guntas of Chevella village acquired by the government under the Land Acquisition Notification issued and award passed on 19.11.1981 or not and directed the trial Court to decide the matter in accordance with law after framing appropriate issues in this regard and after giving opportunity to both parties to lead both oral and documentary evidence.

(e) After the original suit was remanded, the trial Court framed the following additional issues:

ADDITIONAL ISSUES:

1. Whether the suit schedule property of 0-20 guntas of land in Sy.No.72/2 forms part of the land acquired by the Government under the Land Acquisition notification issued and award passed on 19-11-1981 or not?
2. Whether the schedule property forms part of the land in Ac.3-21 guntas in Sy.No.72/2 of Chevella Village or not?
3. Whether the compensation paid in respect of this 0-20 guntas and if so to whom compensation was paid?
4. Whether the plaintiff purchased the land admeasuring 0-20 guntas of land forming part of Sy.No.72/2 situated at Chevella from defendant No.2 through Registered Sale Deed in the year 1981?
5. Whether the Government acquired suit schedule property for establishing Market Yard Chevella in the year 1979 and taken possession under Panchanama dated 10-7-1979?
6. To what relief?

(f) Both the parties adduced additional evidence after framing of additional issues. After considering the entire evidence on record, i.e., the evidence of P.Ws.1 to 3 and the documents Exs.A.1 to A.21 adduced on behalf of the plaintiffs and the evidence of D.Ws.1 and 2 and the documents Exs.B.1 to B.11 adduced on behalf of the defendants, the trial Court dismissed the suit vide judgment and decree dated 16.04.2007. Aggrieved by the said judgment and decree, the plaintiffs preferred A.S. No.20 of 2007 and the first appellate court, while dealing with the matter, vide judgment and decree dated 21.08.2008, was pleased to allow the appeal by setting aside the judgment and decree passed by the trial Court and decreed the suit. Challenging the said decree and judgment passed by the first appellate court, the 1st defendant preferred the second appeal.

5. Learned counsel for the 1st defendant-appellant herein would contend that an extent of Acs.3-22 guntas in Sy.No.72/2 situated at Chevella village was acquired by the government and an award was passed after following the due procedure, such as, issuing a notice to the owner of the land, etc.; the possession of the acquired land was delivered in favour of the 1st defendant on 10.07.1979; once the land is acquired in favour of the 1st defendant, the sale put up by the 1st plaintiff is bad in law; Ex.A.1 registered sale deed confers no title or possession in favour of the 1st plaintiff; the trial Court rightly dismissed the suit filed by the 1st plaintiff assigning reasons; the first appellate court failed to see whether the suit schedule land is part and parcel of the land covered by the award passed; the first appellate court erroneously held that there was a valid sale under Ex.A.1 and the 1st plaintiff is the owner and possessor of the suit schedule land measuring Ac.0-20 guntas in Sy.No.72/2 situated at Chevella village; when once the land is acquired, relevant entries made in favour of the 1st plaintiff and her owner Devara Lakshmamma (D.2) are not at all valid; the first appellate court failed to consider the evidence of D.Ws.1 and 2 and the

documents marked on behalf of the 1st defendant, which confer title and possession of the 1st defendant in respect of the suit schedule land and the other land acquired; and ultimately, prayed to set aside the judgment and decree passed by the first appellate court. He would further contend that the following substantial questions of law do arise for determination in this second appeal. The second appeal is admitted on 13.03.2009 on the said substantial questions of law, which are as follows:

- a) When once the land was acquired by the Government after following the proceedings under the Land Acquisition Act and possession was handed over to the beneficiary. The question of the land being subsequently sold by a private party does not arise and the same is not valid sale in the eye of law.
- b) No transfer of title can pass when the sale itself is invalid in the eye of law.
- c) When the Land Acquisition proceedings has become final and have not been challenged by the respondents and discarding the same by the Lower Appellate Court and hold that the plaintiffs are the owners and possessors of the suit schedule property is not valid in the eye of law.
- d) Whether or not the suit is not maintainable for want of notice under Section 80 CPC, since the Agricultural Market Committee, is a State within the meaning of Art.12 of the Constitution of India.

6. Learned counsel for the plaintiffs-respondents herein would contend that the trial Court erroneously dismissed the suit without considering the evidence on record; the first appellate court rightly decreed the suit after appreciating the entire evidence on record; there are no grounds to interfere with the findings of the first appellate court; no substantial questions of law do arise for determination in this second appeal; and ultimately, prayed to dismiss the second appeal.

7. 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 nor 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.

8. The specific case of the 1st plaintiff is that he purchased the suit schedule land measuring 0-20 guntas in Sy.No.72/2 situated at Chevella village from its original owner, i.e., the 2nd defendant, for a valuable sale consideration under a registered sale deed dated 20.06.1981 marked as Ex.A.1. Thereafter, the name of the 1st plaintiff was mutated in the revenue records and was in peaceful possession and enjoyment over the said land for some and thereafter the 1st defendant started interfering with the peaceful possession of the 1st plaintiff and denied the title. The plaintiffs have filed revenue record, wherein the name of the 2nd defendant-Devara Lakshamma is shown as the owner and possessor of the suit schedule land measuring Acs.3-22 guntas in Sy.No.72/2 of Chevella village. Basing on Ex.A.1-registered sale deed, suit schedule land

measuring 0-20 guntas was mutated in the name of the 1st plaintiff. Though the 1st defendant contended that the government had acquired the land measuring Acs.3-22 guntas in the suit survey number and passed an award, Ex.B.2-copy of the award dated 19.11.1981, reveals that the said land measuring Acs.3-22 guntas was acquired by the government from Devara Chandra Reddy. The 1st plaintiff purchased the suit land from Devara Lakshamma (D.2) and obtained the sale deed under Ex.A.1. The total extent of the land in Sy.No.72/2 is Acs.6-16 guntas. The land acquired in the suit survey number is only Acs.3-22 guntas belonging to Devara Chandra Reddy. The 2nd defendant-Devara Lakshamma is the wife of Devara Janga Reddy. So, the 2nd defendant and Devara Chandra Reddy are different persons holding different extents in suit survey number. There are number of documents to establish that the 2nd defendant-Devara Lakshamma owns and possesses Acs.3-20 guntas of land in suit survey number. An extent of Ac.0-20 guntas was sold by her under Ex.A.1 in favour of the 1st plaintiff. The plaintiffs examining P.Ws.1 to 3 have established their possession and identification of the property. The oral evidence and the documents filed by both sides establish that the land acquired by the government was only Acs.3-22 guntas belonging to Devara Chandra Reddy. The left over land measuring Acs.3-20 guntas in the suit survey number belong to Devara Lakshamma (D.2). Therefore, the award passed under Ex.B.2 has no bearing over the land belonging to the 2nd defendant. Nothing prevents her from alienating the said land. These aspects are not considered by the trial Court. But the first appellate court had elaborately dealt with the oral and documentary evidence placed on record by both sides and was pleased to decree the suit filed by the 1st plaintiff. The land belonging to Devara Chandra Reddy measuring Acs.3-22 guntas in Sy.No.72/2 was delivered to the 1st defendant vide panchanama dated 19.07.1979. This would not affect the rights of the 2nd defendant over her land measuring Acs.3-22 guntas in the suit survey number.

Alienation made by the 2nd defendant in favour of the 1st plaintiff under Ex.A.1 cannot be faulted. Ex.A.1 is genuine document confers title and possession in respect of the suit schedule land measuring Acs.3-20 guntas in favour of the 1st plaintiff. The first appellate court had appreciated these aspects and rightly decreed the suit. The substantial questions raised in this second appeal are with regard to the issue of notice under Section 80 C.P.C. prior to filing of the suit. This aspect was also dealt with and answered by the first appellate court, relying on number of decisions, in favour of the plaintiffs. Now at this juncture, it cannot be a substantial question of law to answer in the second appeal. Further, the other substantial questions of law raised in this second appeal, on which the second appeal is admitted, relates to the acquisition of land in the suit survey number and sale made under Ex.A.1. The identification of the suit land is also established by the plaintiffs. These aspects are only the factual and legal aspects, which are already dealt with and answered by the first appellate court. Now these questions cannot be dealt with under the amended Section 100 of C.P.C., as there is no absolute right of appeal. So, there cannot be any substantial questions of law as contended on behalf of the 1st defendant to determine in this second appeal.

9. 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 Court below is confined to substantial question of law. The findings recorded with regard to the factual and legal aspects by the first appellate court are final. Those findings of facts and law are not amenable to the jurisdiction of this Court by way of second appeal. 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 questions of law much less substantial questions of law do arise for

determination in this second appeal. Therefore, this second appeal is devoid of merit and is liable to be dismissed.

10. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 21.08.2008 passed by the first appellate court in A.S. No.20 of 2007. Interim stay granted on 13.03.2009 in S.A.M.P. No.508 of 2009 stands vacated and miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 23.10.2018

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Dr. SHAMEEM AKTHER, J

