

**THE HON'BLE DR.JUSTICE SHAMEEM AKTHER**

**SECOND APPEAL No.662 OF 2018**

**JUDGMENT:**

This Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, (for short, "C.P.C.") is filed by the appellants/defendants challenging the judgment and decree, dated 28.11.2017, in A.S.No.23 of 2014 on the file of the Judge, Family Court – cum – III Additional District Judge, Vizianagaram, in confirming the judgment and decree, dated 09.07.2014, in O.S.No.163 of 2003 on the file of the Junior Civil Judge, Cheepurupalli, wherein the suit filed by the respondent/plaintiff for perpetual injunction restraining the appellants/defendants, their men and relatives from interfering with the possession and enjoyment of the plaintiff over the suit schedule property and trees therein in Sy.No.22/19 admeasuring Ac.1-00 cents with patta No.379 situated at Karlam Village, Cheepurupalli Mandal, Vizianagaram District was decreed.

2. Heard both sides and perused the record.
3. Learned counsel for the appellants/defendants would contend that both the Courts below erred in decreeing the suit; that the suit was originally filed by the plaintiff for perpetual injunction though she is not in possession and enjoyment of the suit schedule property and hence, she is not entitled for perpetual injunction as granted by the original Court and confirmed by the appellate Court; that the defendants are in possession and enjoyment of the suit schedule property and they have filed Exs.B-1 to B-13 to substantiate their possession and enjoyment

over the suit schedule property; that the trial Court erred in not holding the possession of the defendants over the suit schedule property and holding the plaintiff in possession and enjoyment of the same; that the plaintiff filed only the revenue record and no credibility can be given to that; that the substantial question of law arises with regard to not considering the evidence and documents filed by the defendants before the trial Court and decreeing the suit for perpetual injunction against them; that the principle of *res judicata* is also applicable in view of the decision rendered in O.S.No.130 of 1992 and ultimately, prayed to set aside the same.

4. On the other hand, learned counsel for the respondent/plaintiff would contend that both the Courts below have gone through the legal and factual aspects and decreed the suit in favour of the plaintiff for grant of perpetual injunction in respect of the subject property and ultimately, prayed to dismiss the appeal.

5. In view of the submissions and record, the Second Appeal is filed to frame the following questions of law:

***“11. Whether the judgment and decree of the courts below vitiated by non consideration of relevant pleading, valid evidence and by perverse reasoning?***

***12. Whether the courts below are correct in decreeing the suit by omitting the principal that in a suit for injunction, the person who approached the court to get equitable relief of injunction, he must stand on strength of his own case but not on the alleged weakness of the opposite party?***

***13. Whether the courts below are correct in decreeing the suit without considering that the suit filed by the respondent/plaintiff attracts principle of *resjudicata* under section 11 of C.P.C as the same is subject matter of***

***O.S.No.130 of 1992 on the file of Junior Civil Judge, Cheepurupalli and O.S.No.130 of 1992 is filed by the husband of respondent and the same was dismissed?”***

6. It is evident from the record that the plaintiff had filed a suit for perpetual injunction against the defendants. On behalf of the plaintiff, the plaintiff was examined as P.W.1 and one Nakka Papayya was examined as P.W.2 and got marked Ex.A-1 – D Form patta, dated 11.12.1985, in favour of the plaintiff, Ex.A-2 – Pattadar passbook in the name of the plaintiff, Ex.A-3 – Title deed in the name of the plaintiff, Exs.A-4 to A-10 – Land Revenue Receipts bearing Nos.3543180, 670806, 513892, 3543396, 4720635, 7492822, 559698 respectively for the lands in Karlam Village, Exs.A-11 and A-12 – Certified copies of VA No.3 Adangal for fasli 1411 and 1412 and Exs.A-13 to A-17 – True copies of VA No.3 Adangal for faslies 1410, 1413, 1414, 1515, 1416 respectively. On the other hand, on behalf of the defendants, D.W.1 – Banana Seetharam (defendant No.2) and D.W.2 – Podilapu Ramayya were examined and got marked Ex.B-1 – Certified copy of D-patta in the name of Banana Lakshamma, Ex.B-2 – Attested copy of settlement Fair Adangal Form No.21-B, Ex.B-3 – attested copy of FCO Fair Adangal, Ex.B-4 – Title deed stands in the name of D.W.1 (Banana Seetharam), Ex.B-5 – Pattadar passbook in the name of D.W.1 (Banana Seetharam), Exs.B-6 and B-7 – Title deed and pattadar passbook stands in the name of Banana Laxmamma, Ex.B-8 – Pattadar passbook stands in the name of defendant No.4, Exs.B-9 and B-10 – Title deed and pattadar passbook stands in the name of defendant No.1, Ex.B-11 - certified copy of affidavit and petition in I.A.No.81/92 in O.S.No.9 of 1992, Ex.B-12 - Certified copy of decree in O.S.No.21 of 1966 on the file of Senior Civil

Judge's Court, Srikakulam and Ex.B-13 – Certified copy of judgment in O.S.No.21 of 1966 on the file of Senior Civil Judge's Court, Srikakulam.

7. Both the Courts below, considering the oral and documentary evidence, held that the documents filed by the defendants do not relate to the suit schedule property admeasuring Ac.1.00 cents in Sy.No.22/19 with patta No.379 situated at Karlam Village, Cheepurupalli Mandal and the suit schedule property is in possession and enjoyment of the plaintiff. Both the Courts have considered the documents filed by the plaintiff marked as Exs.A-1 to A-17 to prove the possession over the suit schedule property. The relevant factor to grant perpetual injunction is only possession of the subject property as on the date of filing the suit. The trial Court can incidentally go into the title of the property. The plaintiff had produced Ex.A-2 - pattadar passbook and Ex.A-3 – title deed in respect of the suit schedule property in her favour. The decree of the suit in O.S.No.130 of 1992 does not operate as *res judicata*. Both the Courts have dealt with these aspects elaborately. The impugned judgments are not perverse and they are in consonance with the evidence and material documents. No substantial question of law is to be framed in this appeal. The factual aspects are determined after affording opportunity to both the sides. Under these circumstances, nothing survives for adjudication. There are no grounds to interfere with the concurrent findings of fact arrived at, by both the Courts below. There is no question of law, much less substantial question of law to admit the second appeal. The

second appeal is devoid of merit and is liable to be dismissed at the stage of admission.

8. Accordingly, this Second Appeal is dismissed at the stage of admission confirming the judgment and decree, dated 28.11.2017, in A.S.No.23 of 2014 on the file of the Judge, Family Court – cum – III Additional District Judge, Vizianagaram. There shall be no order as to costs.

9. Miscellaneous petitions pending, if any, in this Second Appeal shall stand closed.

Date : 29.06.2018  
AMD

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AMD