

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.1150 OF 1999

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 07.08.1997 passed in A.S. No.67 of 1995 (Old A.S. No.27 of 1990 on the file of the Sub Court, Anakapalle) on the file of the Subordinate Judge at Yellamanchili, Visakhapatnam District (for short, 'first appellate court'), wherein the first appellate court, while dismissing the appeal, confirmed the judgment and decree dated 19.04.1990 passed in O.S. No.129 of 1986 on the file of the Principal District Munsif, Yellamanchili (for short, 'the trial court'). The Original Suit was filed by the respondent-plaintiff for declaration of her right and title over the suit schedule property and as a consequential relief for possession of the suit schedule property with standing crops and walls thereon after ejecting the appellants-defendants therefrom.

2. Heard the learned counsel for the appellants-defendants and the learned counsel for the respondent-plaintiff, apart from perusing the material on record.

3. For sake of convenience, the parties hereinafter are referred to, as they are 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 plaintiff averred in the plaint that she is the adopted daughter of Triparna Atchanna Dora and the suit schedule lands were acquired by her mother-Chinnammai through her relatives, who enjoyed the same for some time and subsequently, she executed a settlement deed for the schedule properties besides other properties on 05.05.1943 in favour of the plaintiff and since then, the plaintiff has been enjoying the suit schedule properties. Subsequently, taking advantage that the plaintiff is a lady, all the defendants tried to obstruct the plaintiff from enjoying the suit schedule property. When the husband of the plaintiff by name Apparao filed a criminal case in C.C. No.83 of 1969 on the file of the Judicial Magistrate of First Class, Yellamanchili against the 1st defendant, one Chandrayya (father of 2nd defendant) and the 3rd defendant, the defendants agreed for compromise stating that they have no right in the suit schedule properties and again, after death of the father of defendant no.2, the defendants started causing obstructions to the plaintiff from enjoying the suit schedule lands and trespassed into the lands of the plaintiff.

(b) The defendants filed written statement denying all the averments made in the plaint and contended that the defendants

and their fore-fathers have been in continuous possession and enjoyment of the suit schedule property since about 60 years and neither the plaintiff nor her ancestors were in possession or enjoyment over the suit schedule property. Knowing fully well about the rights of the defendants, the brother of the plaintiff by name Chandrayya got issued a notice against the defendants on 23.03.1986 with false allegations out of grudge, for which the defendants gave a reply with real facts. The plaintiff filed the suit and the total extent of land between boundaries mentioned by the plaintiff is Acs.2-39 cents and the plaintiff stated that she got Acs.1-20 cents of land between those boundaries, but she has not given proper boundaries for the said extent of Acs.1-20 cents, and so, it is very difficult to know where the suit schedule land is situated.

(c) Basing on the pleadings, the trial Court framed the following issues and reframed the same while pronouncing judgment:

ISSUES:

1. Whether the plaintiff is the adoptive daughter of Triparna Atchanna Dora?
2. Whether the plaintiff acquired any rights as per the settlement dt.5-5-43 and whether it binds the defendants?

3. Whether the plaintiff is in enjoyment of the suit land within the statutory period and whether the alleged dispossession is true?
4. Whether the defendants perfected their gift in the suit land by the adverse possession?
5. Whether the suit is barred by limitation?
6. Whether the alleged compromise in C.C.83/69 has any legal affect?
7. Whether the plaintiff has title to the plaint schedule property and is in possession of the same?
8. Whether the plaintiff is estopped from questioning plaintiff's possession in view of the compromise in C.C.83/69?
9. To what relief?

RE-FRAMED ISSUES:

- 1) Whether the plaintiff is entitled for the declaration of her title over the plaint schedule property?
- 2) Whether the plaintiff is entitled for possession of the plaint schedule property along with trees and crops therein after ejecting the defendants therefrom?
- 3) To what relief?

(d) The trial Court after considering the evidence of P.Ws.1 to 3 and the documents Exs.A.1 to A.4 marked on behalf of the plaintiff and the evidence of D.Ws.1 to 5 and the documents Exs.B.1 to B.5 marked on behalf of the defendants

and Exs.X.1 to X.2, decreed the original suit as prayed for, vide judgment dated 19.04.1990. Aggrieved by the said judgment and decree, the defendants preferred A.S. No.67 of 1995 and the first appellate court, while dealing with the matter, vide judgment and decree dated 07.08.1997, was pleased to dismiss the appeal by confirming the judgment and decree passed by the trial Court. Challenging the said decree and judgment passed by the first appellate court, the defendants preferred the second appeal.

5. Learned counsel for the defendants-appellants herein would contend that the issues were framed by the trial court on the basis of the pleadings of both the parties; at the time of pronouncing judgment, the trial court without giving notice to the parties, pronounced the judgment by altering the issues framed earlier, which is erroneous; both the Courts below ought to have seen that prior to passing of Hindu Adoptions and Maintenance Act, adoption of a girl was not permissible and if at all, there was any adoption, it cannot be said that it is a valid and legal adoption, as contemplated by law and therefore any adoptive daughter does not get any right on the basis of her adoption; the suit schedule land is an undivided part of the total extent of Acs.2-20 cents belonging jointly to the two widows of late Atchanna Naidu, viz., Nagayamma and the plaintiff, and then the plaintiff ought to have filed the suit for partition and for

separate possession; both the Courts below erred in decreeing the suit in favour of the plaintiff; the findings of both the Courts below are perverse; and ultimately, prayed to allow the second appeal by setting aside the findings of both the Courts below.

6. Learned counsel for the plaintiff-respondent herein would contend that both the Courts below rightly decreed the suit in favour of the plaintiff basing on the evidence available on record; there are no grounds to interfere with the findings of both the Courts below since they are well reasoned; no substantial questions of law do arise for determination in this second appeal; and ultimately, prayed to dismiss the second appeal.

7. While admitting the Second Appeal on 07.04.2000, this Court framed the following substantial questions of law for consideration:

- a) Whether the judgments of the Courts below are not vitiated for violation of the mandatory provisions of Or.14 C.P.C. and Or.41 Rule 24 C.P.C. respectively?
- b) Whether the learned Subordinate Judge having held that the trial Court unilaterally deleted all the issues, is right in not remitting the matter to the trial court for fresh disposal, after reframing the issues in accordance with law?
- c) Whether the finding of the learned Subordinate Judge regarding the validity of adoption of the respondent is not vitiated as the same is opposed to settle principles of Hindu Law?

d) Whether the Judgment of the learned Subordinate Judge is not vitiated on the issue relating to adverse possession?

e) When admittedly the extent of the suit land is Ac.1-20 cents out of total extent of Ac.2-04 cents, out of which the rest of Ac.1-20 cents belonged to late Nagayyamma, the senior widow of late Atchannaidu, whether the suit for recovery of possession without asking for partition and separate possession is maintainable?

8. 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.

9. As per the evidence adduced on behalf of the plaintiff, an extent of Ac.1.20 cents of land i.e. the suit schedule land, was gifted to the plaintiff by her mother Chinnammai, and that her mother Chinnammai got the said land through her husband on his demise. The property gifted has been clearly identified in the registered gift deed as well as by evidence. There was no doubt with regard to identity of the suit schedule property and the gift made in favour of the plaintiff as contended. The suit schedule property is transferred in favour of the plaintiff under Ex.A1. Ex.A1 is an old document dated 05.05.1943. Both the courts below relied on the said document and held that the plaintiff has title to the suit schedule property. The finding is with regard to a fact of transfer of the suit schedule property by way of gift deed under Ex.A1-settlement deed executed by Triparna Chinnammai in favour of the plaintiff. There is also other evidence to establish title of the plaintiff over the suit schedule property. All these are factual aspects and are rightly dealt with by both the courts below. The contentions raised herein are answered by the both the courts below on proper appreciation of the evidence on record. No inadmissible evidence has been acted upon or no admissible evidence has been

omitted. No fairly arguable question which affects the decision of the first appellate court, is made out.

10. On a perusal of the judgments of both the courts below, it is clear that both the courts elaborately discussed the evidence on record. Both the Courts below analysed the entire evidence on record and gave concurrent findings. None of the findings is shown to be perverse. The findings are based on record and there is no infirmity. There are no grounds to take a different view. Under these circumstances, no question of law, much less substantial question of law, as contended by the appellants to deal with under Section 100 of the Code of Civil Procedure, 1908 comes up for determination. Therefore, there are no merits in the Second Appeal. The Second Appeal is devoid of merit and is liable to be dismissed.

11. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in the Second Appeal shall stand dismissed.

Dr. SHAMEEM AKTHER, J

23.10.2018
Siva/DRK

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