

**THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY**

**SECOND APPEAL No.1071 of 2013**

**JUDGMENT:**

1 Assailing the judgment and decree dated 10.08.2011 passed in A.S.No.34 of 2009 on the file of the Court of the Senior Civil Judge, Kothapeta, East Godavari District, confirming the judgment and decree dated 05.08.2009 passed in O.S.No.48 of 2006 on the file of the Court of the Principal Junior Civil Judge, Kothapeta, East Godavari District, dismissing the suit filed for perpetual injunction restraining the defendants from interfering with the suit schedule property, the unsuccessful plaintiff filed the present second appeal.

2 For the sake of convenience, the parties to this second appeal will, hereinafter be referred to, as they were arrayed in the suit.

3 The facts leading to the filing of the present second appeal, in nutshell, are as follows:

4 The case of the plaintiff is that he purchased the suit schedule property admeasuring an extent of Ac.0-71 cents in R.S.No.2/1 of Vadarevupalli village of East Godavari District under a registered sale deed dated 20.04.1998. The plaintiff has been in possession and enjoyment of the suit schedule property as absolute owner. The plaintiff filed Writ Petition on the file of this Court and obtained interim orders

against the officials of panchayat. The panchayat authorities started proclaiming in the village that they will cut away the standing coconut trees and lay road across the suit schedule property. Having no other alternative, the plaintiff filed the suit for perpetual injunction.

5 The defendants filed written statement denying the various averments made in the plaint, *inter alia* contending that the mother of the first defendant occupied an extent of Ac.0-2 cents of vacant site and constructed a thatched hut. The defendants are not interfering with the suit schedule property at any point of time. The defendants are having patta land in the puntha. The plaintiff is having land on the South of the puntha. The plaintiff filed the suit without any cause of action. The suit as framed is not maintainable either on facts or in law and hence the same is liable to be dismissed.

6 Basing on the above pleadings, the trial court framed the following issues:

- 1. “Whether the plaintiff is entitled for permanent injunction as prayed for?”**
- 2. To what relief?”**

7 Before the trial court, on behalf of the plaintiff P.Ws.1 and 2 were examined and Exs.A.1 and A.2 were marked. On behalf of the defendants D.Ws.1 to 3 were examined and Exs.B.1 to B.18 were marked.

8 Basing on the oral, documentary evidence and other material available on record, the trial court dismissed the suit with costs, holding that there is no cause of action in favour of the plaintiff to file the suit against the defendants.

9 Feeling aggrieved by the judgment and decree dated 05.08.2009 passed in by the trial court in O.S.No.48 of 2006, the plaintiff preferred A.S.No.34 of 2009 on the file of the Court of the Senior Civil Judge, Kothapeta. The first appellate Court, after reappraising the oral and documentary evidence available on record afresh, arrived at a conclusion that the plaintiff filed the suit without any cause of action and accordingly dismissed the appeal. Hence the present second appeal by the unsuccessful plaintiff.

10 The learned counsel for the plaintiff / appellant submitted that both the courts below have not properly considered the oral and documentary evidence and dismissed the suit and appeal on erroneous grounds. He further submitted that the findings recorded by the Courts below are perverse and hence they are liable to be set aside.

11 The question of law urged by the learned counsel for the plaintiff / appellant is -

‘Whether the findings recorded by the courts below are perverse?’

12 In a suit for perpetual injunction, the plaintiff has to establish that the defendants, without any right whatsoever, are interfering with the suit schedule property. Infringement of the right of the plaintiff over the suit schedule property is *sine qua non* to file the suit for perpetual injunction.

13 The following admitted facts can be culled out from the pleadings of both parties.

14 The plaintiff purchased the suit schedule property which is an extent of Ac.0-71 cents in R.S.No.2/1, Vadarevupalli village, P. Gannavaram Mandal, East Godavari district under a registered sale deed dated 20.04.1998. It is the case of the plaintiff that the gram panchayat is making hectic efforts to cut the coconut trees standing in the suit schedule property in order to lay a road. It is the further case of the plaintiff that the electricity department is taking steps to erect electric poles in the suit schedule property. It is not the case of the plaintiff that the defendants are employees of the gram panchayat or electricity department.

15 A perusal of the record reveals that the plaintiff filed O.S.No.181 of 1991 against the gram panchayat. It is the case of the defendants that the mother of the first defendant occupied the suit schedule property. The recitals of Exs.B.1

to B.18 clearly reveal that the defendants are paying house tax to an extent of Ac.0-02 cents. If the testimony of P.W.1 is taken into consideration, the electricity department already erected poles. If the gram panchayat made an attempt to lay road in the suit schedule property, the plaintiff ought to have filed suit against the gram panchayat instead of defendants. The plaintiff is not seeking any relief against the defendants. The apprehension of the plaintiff that the defendants may interfere with the suit schedule property is not supported by any evidence much less cogent and convincing evidence. The trial court after considering the oral and documentary evidence available on record arrived at a conclusion that there is no cause of action accrued in favour of the plaintiff to file the suit for perpetual injunction against the defendants. The first appellate court, after reappraising the oral and documentary evidence available on record, arrived at a conclusion that the apprehension of the plaintiff that the defendants may interfere with the suit schedule property is not supported by evidence much less legally admissible evidence. The findings recorded by the courts below are based on evidence much less legally admissible evidence.

16 Both courts concurrently held that there is no cause of action accrued in favour of the plaintiff to file the suit. The first appellate court is the fact finding final court. While

exercising jurisdiction under Section 100 CPC, this court once again cannot go into the factual aspects. The findings recorded by the courts below are supported by oral and documentary evidence. Therefore, I am unable to accede to the contention of the learned counsel for the plaintiff/appellant that the findings recorded by the courts below are perverse.

17 In *Municipal Committee, Hoshiarpur v. Punjab SEB*<sup>1</sup> the Hon'ble Apex Court held at para No.16 as follows:

16. Thus, it is evident from the above that the right to appeal is a creation of Statute and it cannot be created by acquiescence of the parties or by the order of the Court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a Court or Authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance of the conditions mentioned in the provision that creates it. Therefore, the Court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The Court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal, on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the provisions of Section 100 C.P.C. It is the obligation on the Court to further the clear intent of the Legislature and not to frustrate it by ignoring the same. (Vide: Santosh Hazari v. Purshottam Tiwari (dead) by Lrs. AIR 2001 SC 965; Sarjas Rai and Ors. v. Bakshi Inderjeet Singh (2005) 1 SCC 598; Manicka Poosali (Deceased by L.Rs. ) and Ors. v. Anjalai Ammal and Anr. AIR 2005 SC 1777; Mst. Sugani v. Rameshwar Das and Anr. AIR 2006 SC 2172; Hero Vinoth (Minor) v. Seshammal: AIR 2006 SC 2234; P. Chandrasekharan and Ors. v. S. Kanakarajan and Ors. (2007) 5 SCC 669; Kashmir Singh v. Harnam Singh and Anr. AIR 2008 SC 1749; V. Ramaswamy v. Ramachandran and Anr. (2009) 14 SCC 216; and Bhag Singh v. Jaskirat Singh and Ors. (2010) 2 SCC 250).

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<sup>1</sup> (2010) 13 SCC 216

18 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that there is no question of law, much less, substantial question of law, in this appeal, which warrants interference of this Court while exercising jurisdiction under Section 100 CPC.

19 Hence the appeal is dismissed at the stage of admission.

Date: November 08, 2018

***Kvsn***

**T.SUNIL CHOWDARY, J**

