

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.615 of 1999

JUDGMENT:

This Second Appeal is preferred by the appellant/defendant No.3 aggrieved by the Judgment and Decree dated 30.12.1998 in A.S.No.65 of 1993 passed by the learned Additional District Judge, Khammam whereby and whereunder the learned Judge dismissed the appeal filed by him confirming the Judgment and Decree dated 24.09.1993 in O.S.No.260 of 1981 passed by the Principal District Munsif, Khammam, filed for declaration of title and perpetual injunction.

2) The parties in this Second Appeal are referred as they were arrayed before the Trial Court.

3) The factual matrix of the case is thus:

a) Plaintiff's case is that suit schedule land admeasuring 758.33 sq. yds. in Sy.No.235 of Khanapuram Haveli, Khammam abutting to Wyra Road belonged to Kandiraju Mangapathi Rao and Kandiraju Venkatarama Rao, was purchased by him for a sale consideration of Rs.4,000/- through Ex.A1—registered sale deed dated 08.12.1976 and ever since he was in peaceful possession and enjoyment of the same. While so, when the defendants tried to construct basement by force he desisted but of no avail.

Hence, the suit.

b) D1 remained ex-parte.

c) D3 filed written statement denying all the material allegations and contended that plaintiff never purchased the suit land and denied the possession and ownership of his vendors—Kandiraju Mangapathi Rao and Kandiraju Venkata Rama Rao; plaintiff is not a bona fide purchaser and he is not in possession; on the contrary, he (D3) purchased the land in question from Chegu Parvathamma on 20.02.1981 and ever since he has been in possession and enjoyment; the boundaries of the suit land shown in the plaint are not part of Sy.No.235, but part of Sy.No.265; he engaged coolies and constructed the compound wall. He also contended that originally the suit land belonged to one Alluri Kilari and others from whom it was purchased by Konatham Venkateswarlu through Ex.B4—registered sale deed dated 12.12.1969; thereafter, the said Venkateswarlu obtained loan of Rs.4,000/- from one Thipirisetty Rangaiah and executed Ex.B3—registered simple mortgage deed dated 05.08.1972 and subsequently he (Venkateswarlu) sold the suit land to Chegu Parvathamma on 23.04.1975 covered under Ex.B2. Therefore, the plaintiff or his vendors have no right or title over the suit land. He thus prayed to dismiss the suit.

d) D2 filed a memo adopting the written statement of D3.

e) D4 filed a separate written statement contending that originally suit land admeasuring 758.33 sq. yds. in Sy.No.235 of Khanapuram Haveli, Khammam belonged to Kandiraju Mangapathi Rao and Kandiraju Venkatarama Rao, which was purchased by plaintiff for a valid

consideration of Rs.4,000/- through registered sale deed dated 08.12.1976 covered by Ex.A2 and ever since plaintiff was in possession and enjoyment of the same as rightful owner. Believing the words of plaintiff that suit was decreed in his favour on 13.02.1987 by the competent Civil Court, he entered into an agreement with the plaintiff to purchase the property to the extent decreed in his favour and purchased the same through a registered sale deed dated 04.05.1987 and ever since he was in possession and enjoyment to an extent of 608.73 sq. yds. from out of the suit property which was decreed in favour of plaintiff by the Court. He denied the purchase made by D3 from Chegu Parvathamma and also denied that suit land is not part of Sy.No.235, but it is a part of Sy.No.265. He contended that neither Aluri Kilari nor the alleged purchasers including D3 have any saleable right or interest over the suit land and as such, the claim of D3 is untenable and the alleged purchase of D3 through agreement of sale dated 20.02.1981 cannot be countenanced. He thus prayed to dismiss the suit.

f) Basing on the above pleadings, the Trial Court framed the following issues.

- 1) Whether the plaintiff is the owner of the suit site and entitled for declaration?*
- 2) Whether the plaintiff is in possession of the suit site and entitled for permanent injunction?*
- 3) To what relief?*

g) The following additional issue was framed on 20.08.1990.

Whether defendant No.4's purchase of land an extent of 608.70 sq.yds. from plaintiff is valid transaction and defendant No.4 is in possession?

h) During trial, PWs.1 to 8 were examined and Exs.A1 to A5 were marked and Exs.C1 to C15 were exhibited on behalf of plaintiff. DWs.1 and 2 were examined and Exs.B1 to B18 were marked on behalf of defendants.

i) After hearing both sides and basing on the oral and documentary evidence, the trial Court observed that property claimed by the defendants is in Sy.No.265 is nothing to do with the suit property and the plaintiff clearly established his title over the suit property as well as subsequent sale in favour of D4 and accordingly decreed the suit.

j) Aggrieved, the 3rd defendant filed A.S.No.65 of 1993 before the Additional District Judge, Khammam and the said appeal was dismissed by confirming the judgment of the Trial Court.

Hence, the instant Second Appeal by plaintiff.

k) During the pendency of appeal, sole appellant died and appellants 2 and 3 were brought on record as his LR. vide Court order dated 23.12.2014 in SAMP No.2411 of 2014. Likewise R2 died. Therefore, C.M.P.No.1432 of 2006 was filed for impleadment of his LR— Smt.Chegu Parvathamma as 5th respondent wherein notice was ordered on 06.07.2006, but as no steps were taken for payment of batta, this Court by order dated 05.07.2011 dismissed the appeal as against R5.

4) It was noted that on 14.07.1999 the appeal was simply admitted without framing specific substantial questions of law. Hence, on 18.11.2016, a learned Judge of this Court framed the following substantial questions of law.

1. *Whether the pendente suit alienee of plaintiff subsequently impleaded being third party as co-defendant in the suit for declaration of title with consequential permanent prohibitory injunction, that was disposed of in decreeing the suit only in favour of plaintiff and against defendant Nos.1 to 3 and not in favour of 4th defendant alienee from plaintiff undisputedly, but even without silence dismissed the suit against 4th defendant in no way enures any benefit to the alienee even impleaded invoking Order XXII Rule 10 and Order 1 Rule 10 clause (2) vis-à-vis Section 146 CPC same whether sustainable and not perverse, ill-appreciation of the fact and said finding not devoid of merits?*

2) *Whether the claim of plaintiff of defendants dug trenches in the property tantamounts to only sporadic of trespass or dispossession as contended by defendant and if so without a clear finding therein as to any necessity seeking the relief of possession or not whether decree granting declaration with consequential permanent injunction is unsustainable and devoid of merits and ill-appreciation of fact and law?*

3) *Whether the plaint schedule property within boundaries no doubt shall prevail from the rival contentions of situated according to the plaintiff in S.No.235 and without any clear finding as to in which survey number that too Ex.A1—title deed of plaintiff exhibited so also Ex.B19-final decree in suit for partition O.S.No.24 of 1963 based on permanent decree-Ex.A3 when refers the property of Kameswari Devi as part of eastern boundary from the plaint schedule of O.S.No.24 of 1963, the discussion of the lower appellate Court in saying as if not western boundary is devoid of merits,*

perverse and unsustainable so also without determination in granting the relief of declaration and injunction?

5) Heard arguments of Sri V.L.N.G.K.Murthy, learned senior counsel for Sri Srinivas Emani, learned counsel for appellants and Sri B.Sitaramaiah, learned counsel for respondent No.1 and Sri V.K.Shiva Shankar, learned counsel for respondent No.4. R2 died. Though notice served on R3, there is no representation.

The crux of the Second Appeal lies in the substantial question No.3 and hence taken up at first.

6) **Substantial Question No.3:** The crucial facts touching this question are that the plaintiff seeking declaration and perpetual injunction against D1 to D3 in respect of specific vacant land of 758.33 sq. yds. in Sy.No.235 of Khanapuram Haveli abutting Wyra road. The plaint schedule boundaries are thus:

East : The land and compound wall of Smt.K.Kameswari Devi

W/o.K.L.Narasimha Rao, Advocate, out of Sy.No.235.

West : Proposed 30' feet

North : 100' wide Wyra road

South : The land of Kandiraju Mangapathi Rao.

It is his case that he purchased the above property from Kandiraju Mangapathi Rao and his son—Kandiraju Venkatarama Rao (PW4) under Ex.A.1—sale deed and defendant without any semblance of right tried to meddle with the same. Whereas defendants' case is that suit property is covered by Sy.No.265 but not by Sy.No.235 wherein plaintiff's vendors

had no title; D4 purchased suit property under Ex.B1—agreement to sell from Parvathamma—the wife of D1 who in turn purchased under Ex.B2—sale deed from one K.Venkateswarlu and the said Venkateswarlu purchased the suit property from Mandava Narayana under Ex.B4—sale deed dated 12.12.1969; Mandava Narayana in turn purchased the said property from Alluri Kilari under Ex.A2—sale deed dated 28.03.1969. As per Exs.B1, B2 and B4 the boundaries of suit plot are:

East: Compound wall of Laxmi Narasimha Rao (H/o Kameswari Devi)

South: Plot of Kandiraju Mangapathi Raju

West: Plot of Chippa Narayana

North: PWD road leading to Wyra

Thus, as can be seen, except the difference in western boundary the plaintiff schedule plot and plot claimed by defendants 1 to 3 is one and the same. However, the bone of contention is the difference in survey number. According to plaintiff, the suit plot is covered by Sy.No.235 but as per defendants 1 to 3, it is covered by Sy.No.265 and it is their property which the plaintiff unjustly claimed. The trial Court decreed the plaintiff's suit holding that plaintiff on the strength of Ex.A1—sale deed established that he purchased the suit plot covered by Sy.No.235 from Mangapathi Rao by examining PW4 and also by producing Exs.A2 to A5, which relate to the title of his vendors in Sy.No.235. Coming to defendants, the trial Court referring to Ex.B1—agreement to sell observed that it does not contain the survey number and date and hence the said document creates a doubt about its genuineness. Referring Exs.B2

and B4—title deeds of predecessors of D4, the trial Court observed that those sale deeds relate to Sy.No.265 and they have nothing to do with plaintiff schedule property covered by Sy.No.235 and thus negated the contention of defendants. It should be noted that the trial Court had no occasion to comment on crucial document i.e. Ex.B19 as the same was marked only in A.S.No.65 of 1993.

7a) During the appeal, certified copy of final decree proceedings in I.A.No.199 of 1969 in O.S.No.24 of 1963 was marked as Ex.B19 on behalf of appellant/D3. The said document was produced by the appellant to show that plaintiff's vendor and one P.Veerabhadrayya partitioned some landed property in Sy.No.235 by compromise and accordingly a final decree was passed in O.S.No.24 of 1963 and plaintiff's vendor sold Ac.0-12gts of land to Kameswari Devi and after selling the said extent, he was left with no property in Sy.No.235. The western boundary of land purchased by Kameswari Devi is shown as land in Sy.No.265 over which the plaintiff's vendor had no right. However, plaintiff claimed to have purchased the suit property abutting to Kameswari Devi on her western side, which means, he purchased the plot in Sy.No.265 but not in Sy.No.235.

b) The appellate Court was not convinced with the above argument of the appellant. It observed that even after selling Ac.0.12 gts. to Kameswari Devi, plaintiff's vendor had some more land in Sy.No.235 as it was nobody's case that plaintiff's vendor sold away all the property which he got in the partition to Kameswari Devi. Hence, he might have

sold the suit plot from out of the remaining land he got in the partition with P.Veerabhadrayya. The appellate Court agreed with the trial Court in other respects and dismissed the appeal.

8a) In the above back drop, fulminating the judgment of the lower appellate Court, learned senior counsel Sri V.L.N.G.K.Murthy would vehemently argue that when it is the emphatic case of the plaintiff that he purchased the suit plot in Sy.No.235 which is denied by the defendants, the burden of proof lies on him to establish that he purchased the suit property covered by Sy.No.235 over which his vendors have clear title. He would argue that though three Commissioners were appointed by the trial Court, none could localize the suit plot in Sy.No.235 with exactitude. Even PW4, who is one of the vendors of the plaintiff, also, could not definitely state whether the suit property was covered by Sy.No.235 or Sy.No.265. Hence, at the threshold, the plaintiff miserably failed to establish that he purchased the suit property in Sy.NO.235. Unless he clinchingly establishes the said fact, plaintiff cannot get a decree since his vendors admittedly had no property in Sy.No.265.

b) Nextly, he would argue, the lower appellate Court miserably failed to appreciate the true import of Ex.B19 and made perverse appreciation and erroneously negated the contention of appellant. As per plaint schedule, the eastern boundary is the land and compound wall of Kameswari Devi W/o K.Laxminarasimha Rao. Whereas, as per Ex.B19, Kameswari Devi purchased Ac.0.12 gts. of land from plaintiff's vendor with definite boundaries. The western boundary is shown as Sy.No.265

over which plaintiff's vendor, admittedly, had no right. In final decree proceedings, her claim was approved and she was added as respondent No.2 and out of the property fell to the share of plaintiff's vendor, the land purchased by her was allotted to her as can be seen from Ex.B19. When Ex.A1 and Ex.B19 are studied conjunctively, he argued, one would come to a logical conclusion that plaintiff purchased the property in Sy.No.265 lying to the west of Kameswari Devi over which the plaintiff's vendor had no right or title. To project this fact, the appellant got marked Ex.B19. However, the lower appellate Court committed a grave error and made a perverse appreciation with regard to Ex.B19 to the effect that plaintiff's vendor has not sold away the entire property got by him in the partition and he only sold Ac.0.12 gts. to Kameswari Devi and therefore, from the remaining extent in Sy.No.235, he might have sold the suit property to plaintiff. Severely carping this observation, learned senior counsel would argue, if plaintiff's vendor sold suit plot to plaintiff from out of the remaining extent of the land which he got in partition, there was no possibility of plaintiff getting the plot to the immediate west of Kameswari Devi since the western property is covered by S.No.265 but not S.No.235 over which Mangapathi Rao had no right. In other words, if plaintiff's vendor sold a plot from out of the remaining extent of the land he got in partition, the boundaries should have been different. Without considering this aspect the appellate Court erroneously held as if Mangapathi Rao sold suit plot from his remaining extent. He thus argued that since the above appreciation being perverse and goes to

the root of the case, it can be treated as substantial question of law and rectified in the Second Appeal.

9a) In oppugnation, learned counsel for respondents argued that both the Courts below rendered a concurrent finding of fact to the effect that plaintiff could establish the title of his vendor in Sy.No.235 and accordingly decreed the suit. In that view, in the Second Appeal the said concurrent finding cannot be disturbed as no question of law is involved therein. On this proposition he relied upon the following judgments.

1) *Dnyanoba Bhaurao Shemade vs. Maroti Bhauro Marnor*¹

2) *Roop Singh (dead) through LRs vs. Ram Singh (dead) through LRs*²

3) *Mohan Lal vs. Nihal Singh*³

4) *Ramaswamy Kalingaryar vs. Mathayan Padayachi*⁴

b) The ratio in those decisions is that whether Courts below reached a finding of fact on the weight of evidence or not is a question which will remain in the realm of appreciation of evidence and does not project any question of law, much less substantial question of law, to be upset in the Second Appeal. He further argued that the defendants have absolutely no case for, in Ex.B1—agreement to sell, no survey number is mentioned. Therefore, it is quite mysterious as to which property was purchased by D.3. Added to it, he argued, there is any amount of discrepancy in

¹ (1999) 2 SCC 471

² (2000) 3 SCC 708

³ (2001) 8 SCC 584

⁴ AIR 1992 SC 115

respect of property description in the sale deeds of the predecessors in title of D3. For instance, in Ex.A2 the survey number and boundary particulars are shown differently from the survey number and boundaries in Exs.B2 and B4. Therefore, the defendants failed to establish their case. Considering the same the Courts below rightly decreed the suit. As there are no substantial questions involved, the Second Appeal may also be dismissed.

I gave my anxious consideration to the above arguments.

10) It is trite principle of law that the plaintiff who seeks declaration and injunction has to establish his case without depending on the weakness of the defendant. As already noted supra, the crux lies in the fact whether plaintiff could establish the location of suit property within Sy.No.235 and the title of his vendor over it.

11) Plaintiff besides examining himself as PW1, also examined PW4, who is one of his vendors and produced Exs.A1, A3 to A5. Added to it, Advocate Commissioners and Surveyors who were appointed to submit report regarding Sy.Nos.235 and 265 were also examined and their reports were marked.

a) The evidence of PW.1 and Ex.A.1 would depict as if he purchased plaint schedule site in Sy.No.235/e from PW.4 and his father. Title of vendors is concerned, the plaintiff mainly relied upon Exs.A3 to A5. PW4 deposed that in a compromise decree passed between his father and P.Veerabhadrayya in O.S.No.24 of 1963, his father got about 7 acres of

land in Sy.No.235 out of which the present suit property was sold to plaintiff. Ex.A3 is preliminary decree passed by Subordinate Judge, Khammam in O.S.No.24 of 1963 where in it was held plaintiff—P.Veerabhadrayya and defendant—K.Mangapathi Rao should get the suit land covered by Sy.No.235 in equal shares. Ex.A4 is the sketch of Sy.No.235. Ex.A5 is the Commissioner's report in final decree petition in I.A.No.199 of 1969 which reads that though the suit property was shown as Ac.16.38gts, while taking measurements, Commissioner came to know that around Ac.2.19gts was acquired by PWD and Revenue Departments leaving Ac.14.19 gts. for partition. He divided the land into two equal halves i.e, 'A to E' plots to the share of plaintiff and '1 to 5' to the defendant. According to PW4, in the final allocation, however plots 'A to E' were allotted to his father and plots '1 to 5' were allotted to P.Veerabhadrayya and the suit land in plot 'A' was sold to plaintiff. In the cross-examination he admitted that he do not know whether suit land is in S.No.235 or in S.No.265. Thus, the evidence of PW4 is only helpful to the extent that his father got land in Sy.No.235 in partition and he executed sale deeds to different persons including plaintiff. However, he cannot definitely say whether suit land falls within Sy.No.235 or Sy.No.265. I have verified the evidence of PWs.2, 3, 5 to 8. The Commissioners who executed warrants with the help of Surveyors could not localize the suit property because, with the effluence of time, number of constructions came in Sy.Nos.235 and 265. Thus, it must be said the evidence produced by the plaintiff could not establish in definite terms that the suit property is situated in Sy.No.235. On the other hand, a close

scrutiny of Exs.A2 to A5 and Ex.B19 would give an understanding that the suit plot is existed in Sy.No.265 but not in Sy.No.235.

b) Ex.B.19 is the order in Final Decree proceedings between P.Veerabhadrayya and K.Mangapathi Rao. It should be noted that the suit O.S.No.24/1963 was filed by P.Veerabhadrayya for partition of Ac.16-36 gts of land in Sy.No.235. Partition was not sought for any other properties much-less, for the land in Sy.No.265. In the said suit, parties compromised and a final decree was passed in I.A.No.199/1969. Since K.Kameswari Devi claimed to have purchased Ac.0-12gts of land in Sy.No.235 from Mangapathi Rao, she was added as respondent No.2 vide order in I.A.No.396/1969. In Para 16 of the Order, the boundaries of the aforesaid Ac.0-12gts are given which are very much germane for our case. They are:

East : The remaining land in Sy.No.235
 West : **Sy.No.265**
 North : Wyra Road.
 South : The remaining land in Sy.No.235.

It is pertinent to note, as per Ex.B.19, the Court allotted Plots 'A' to 'E' mentioned in Commissioner's sketch to K.Mangapathi Rao and Plots '1 to 5' to P.Veerabhadrayya. The Court also observed that the land sold to Kameswari Devi falls in Plot 'A' that fell to the share of Mangapathi Rao. Therefore, under Ex.B.19, Veerabadrayya, Mangapathi Rao and Kameswari Devi got landed plots in Sy.No.235 only. The plaintiff or PW.4 did not place any record in this case that the vendors of

plaintiff got land in Sy.No.265 also. Therefore, the obvious conclusion is that Mangapathi Rao and PW.4 had lands in Sy.No.235 only.

c) With the above facts in mind, if Ex.B.19 and Ex.A.1 are placed in juxtaposition, the only inference that can be drawn is that the plaintiff must have purchased vacant site in Sy.No.265 but not in Sy.No.235 because, the plaintiff's vendors have had no land covered by Sy.No.235 beyond the western side of Ac.0-12gts sold to Kameswari Devi. Unfortunately, the lower Appellate Court failed to comprehend this fact borne out by the record. In para 15 of its judgment, the Court observed, which we can understand, Kameswari Devi purchased only Ac.0-12gts in Plot A and she has not purchased the entire land in Sy.No.235 that fell to the share of Mangapathi Rao. Thus the lower Appellate Court was of the view that out of the remaining land, Mangapathi Rao and PW.4 might have sold the suit plot to the plaintiff. This observation could be correct only if plaint schedule boundaries do not show Kameswari Devi on any side. In a given case, when two admitted facts (Ex.A.1 and Ex.B.19 in the instant case) are placed opposite to each other and only one finding can be arrived at by a man of ordinary prudence, but, if the lower appellate Court with its legal wisdom and experience and most importantly logic, draws altogether a different conclusion which is impossible, its appreciative exercise cannot but be termed as perverse as in the instant case. It is true that as per the citations placed by the respondents, in a Second Appeal, generally the concurrent finding on facts arrived at by the lower Courts shall not be disturbed. However, if such findings are perverse in nature due to total ignorance of evidence on record or

misappreciation of evidence, the High Court in the Second Appeal can interfere to do the justice. Vide:

- 1) *Manicka Poosali v. Anjalai Ammal*⁵,
- 2) *Govindaraju v. Mariamman*⁶,
- 3) *Abdul Raheem v. Karnataka Electricity Board*⁷
- 4) *Dinesh Kumar v. Yusuf Ali*⁸

Therefore, it must be held, plaintiff failed to prove the title of his vendors in the plaint schedule property.

d) It is true, defendants case is also not blemishless. D.3 claims that the suit property is in Sy.No.265 but not in Sy.No.235 and she is the owner thereof but not the plaintiff. Ofcourse in the light of above discussion it is clear that suit property lies in Sy.No.265 and plaintiff could not establish his title thereto. Sofaras D.3's title is concerned, in Exs.B.1, B.2 and B.4, the suit property is mentioned with survey number as 265. Be that as it may, D.3 and her immediate purchasers in title trace their title through one Mandava Narayana, who purchased from Alluri Kilari under Ex.A.2—sale deed dated 28.03.1968. However in Ex.A.2, the survey number of the property is mentioned as 245 and boundaries also differ from the boundaries mentioned in Exs.B.1, B.2 and B.4. Therefore, there is a doubt regarding the title of D.3 also over plaint schedule property. However, as stated supra, in a case of this nature, the burden of proof always rests on the plaintiff to establish his title and

⁵ (2005) 10 SCC 38

⁶ (2005) 2 SCC 500

⁷ (2007) 14 SCC 138

⁸ (2010) 12 SCC 740

possession to claim a decree. He cannot bank upon the debility in the case of the defendant. So the substantial question No.3 is concerned, the lower Appellate Court made a perverse appreciation of facts and evidence in arriving at the finding regarding the title of the plaintiff. Hence, it is held that plaintiff failed to establish his title to the suit property.

12) **Substantial Question No.2:** This question refers to the point as to whether, in the light of facts and evidence, the plaintiff's suit for declaration and injunction instead of seeking possession is maintainable. The observation of the lower Appellate Court is that since the interference of the defendants and construction of basement were subsequent to the filing of the suit, there was no need for plaintiff to seek for possessory relief. I am afraid, this observation is again a perverse one and against the accepted principles of law. In the plaint, the plaintiff unequivocally stated that the defendants, with an intent to grab the suit schedule land and taking advantage of his absence, dug a trench and were trying to construct basement by force. Having come to know their highhanded behavior, when the plaintiff went to the spot and tried to resist them, they paid a deaf ear. Hence the suit. Thus, from the aforesaid pleading it is clear that the defendants defied the protest of the plaintiff and constructed a basement even before filing of the suit. In his cross-examination the plaintiff stated that when he purchased the land, he did not level the ditch but defendant No.2 leveled the ditch in basement around the suit land and leveled the land. Be that it may, PW.8 one of the Commissioners stated in his evidence that during his visit he located

basements on southern side and western side of the disputed property. That being the factual scenario, even assuming the trenches were dug prior to filing of the suit and basements were constructed subsequent to the filing of the suit, the act of defendants would in legal parlance amount to trespass into the suit property. In that event, the legal course open to the plaintiff is to amend his prayer for injunction to possession subject to law of limitation. Therefore, plaintiff's suit in the present form of declaration and injunction is not maintainable. The lower Appellate Court however erred in this regard holding there is no need for amendment.

13) **Substantial Question No.1:** Defendant No.4 is a *pendente lite* purchaser from the plaintiff. Hence he was added as 4th defendant and plaintiff did not seek for any decree against him. The Trial Court decreed the suit against defendants 1 to 3 and dismissed against defendant No.4. The lower Appellate Court confirmed the said decree and judgment. It is now the argument of the learned counsel for appellant that since the decree was passed only in favour of plaintiff and not including 4th defendant, the said decree is of no use, because plaintiff had no title in the suit property as he alienated to D.4. This argument is correct. The Trial Court ought to have decreed the suit in favour of plaintiff and 4th defendant together or atleast in favour of D.4 since he happened to be the *pendente lite* purchaser. For the fault of the Court in couching the relief, generally party shall not be made to suffer as per the principle *Actus Curiae Neminem Gravabit* (act of the Court shall prejudice no one). However, in view of the findings on questions 2 and 3 holding that

plaintiff failed to establish title and his suit in present form is not maintainable, any finding on question No.1 is only of academic importance.

14) In the result, this Second Appeal is allowed by setting aside the judgment in AS No.65 of 1993 passed by the Additional District Judge, Khammam. Consequently, O.S.No.260 of 1981 on the file of Principal District Munsif, Khammam is dismissed. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 22.01.2018
Murthy/scs

U. DURGA PRASAD RAO, J

