

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.148 of 2013

JUDGMENT:

This appeal is filed by the second plaintiff, under Section 100 of CPC, assailing the judgment and decree dated 29.10.2012 passed in A.S. No.67 of 2011 on the file of the Special Sessions Judge for Trial of Cases under SCs & STs-cum-Additional District Court, Anantapur, wherein and whereby the judgment and decree dated 25.8.2011 passed in O.S.No.376 of 2005 on the file of the Court of Principal Junior Civil Judge, Anantapur, dismissing the suit for perpetual injunction, was confirmed.

2. The parties will hereinafter be referred to as they were arrayed before the trial Court, to avoid confusion.

3. The facts leading to filing of the present appeal are, in nutshell, as follows: First plaintiff is the wife of second plaintiff. Defendant let out the suit schedule property in favour of second plaintiff and one Srinivasulu, in the year 1985, for a period of five years. After expiry of the lease period, defendant extended the lease for a period of one year i.e., 1991 in the name of first plaintiff. Plaintiffs have been carrying on business in the name and style of "Gopi Suppliers" in the suit schedule property. As per the record, the lease stood in the name of second plaintiff. The plaintiffs used to pay the rent at Rs.1,200/- per month. The electricity connection also stood in the name of second plaintiff. The defendant, without any right whatsoever, interfered with the suit schedule property. Hence, the plaintiffs filed the suit. The defendant filed written statement denying the averments made in the plaint, *inter alia* contending that it let out the suit schedule

property in the name of second plaintiff and one Srinivasulu in the year 1985. The lease period expired in the year 1990. Subsequently, lease period was extended in the name of first plaintiff for a period of one year. The extended lease period also expired in the year 1991. Second plaintiff, by forging the signatures of first plaintiff on the plaint and other documents, filed the suit. Since the second plaintiff suppressed the material facts, he is not entitled for the equitable relief of perpetual injunction. Second plaintiff sub-let the suit schedule property to one Baba Moinuddin, without knowledge and consent of the defendant. Second plaintiff vacated the suit schedule property on 22.5.2005 and defendant took over the possession of the same. Hence, the suit is liable to be dismissed. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiffs are entitled for permanent injunction as prayed for? and
2. To what relief?

To substantiate the case, second plaintiff examined himself as P.W.1 and got marked Exs.A.1 to A.7. On behalf of the defendant, no oral or documentary evidence was adduced. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff filed the suit by forging the signatures of first plaintiff and the plaintiffs sub-let out the suit schedule property to one Baba Moinuddin without consent of the defendant, consequently dismissed the suit. Feeling aggrieved by the judgment and decree of the trial Court, second plaintiff alone preferred A.S.No.67 of 2011. The first appellate Court, after re-appraising the oral and documentary evidence available on record, arrived at a conclusion that second plaintiff is

not entitled for the equitable relief of permanent injunction, and dismissed the appeal. Hence, the second appeal.

4. Heard the learned counsel for the appellant. The question of law formulated in this second appeal is:

Whether there is any perversity in the concurrent findings of fact or law recorded by the Courts below?

5. As per the testimony of P.W.1, defendant let out the suit schedule property in favour of him and one Srinivasulu in the year 1985. The lease period expired in the year 1990. It is the further case of the plaintiffs that the defendant extended the lease period up to 1991 in the name of the first plaintiff, who is the wife of second plaintiff. As per the findings recorded by the trial Court, second plaintiff filed the suit by forging the signatures of first plaintiff. As per the averments made in the written statement, second plaintiff vacated the premises in the year 2002; thereafter, second plaintiff filed the suit. For one reason or the other, second plaintiff did not choose to examine first plaintiff, who is his wife, to substantiate that the plaint and other documents bear her signatures. In the cross-examination, P.W.1, in unequivocal terms, admitted that the lease was extended in the name of his wife—first plaintiff up to 1991. He further deposed that his wife deserted him in the year 1991; thereafter he does not know her whereabouts. If that is so, how he filed the suit along with his wife is not properly explained. This clearly indicates that second plaintiff forged the signature of first plaintiff and filed the suit. The receipts issued by the defendant stands in the name of first plaintiff. The material available on record clearly reveals that second plaintiff suppressed the material facts and filed the suit.

6. It is a settled principle of law that a person, who seeks equitable relief, has to approach the Court with clean hands by placing all material facts. The person, who suppressed the material facts, is not entitled for the equitable relief of perpetual injunction. The trial Court, basing on the material available on record, dismissed the suit on the ground that second plaintiff filed the suit by forging the signatures of first plaintiff. The first appellate Court, after re-appraising the oral and documentary evidence available on record, arrived at a conclusion that the second plaintiff filed the suit by forging the signatures of first plaintiff on the plaint, vakalat and other documents. The first appellate Court also arrived at a conclusion that second plaintiff failed to prove that he was in possession of the suit schedule property as on the date of filing of the suit and consequently dismissed the appeal.

7. If the findings recorded by the Courts below are perverse, this Court can set aside the same while exercising the jurisdiction under Section 100 of CPC. The findings recorded by the Courts below are based on evidence much legally admissible evidence. The Courts below have assigned reasons much less cogent and convincing reasons to its finding. I am fully endorsing the finding recorded by the Courts below.

8. Having regard to the facts and circumstances of the case, I am of the considered view that the question raised by the learned counsel for the appellant will not fall within the ambit of Section 100 of C.P.C. There is no question of law much less substantial question of law in this appeal.

9. In the result, the second appeal is dismissed at the stage of admission. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 29.10.2018
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