

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.545 of 2000

JUDGMENT:

This appeal is filed by the plaintiff, under Section 100 of CPC, assailing the judgment and decree dated 21.2.2000 passed in A.S. No.5 of 1995 on the file of the I Additional District Court, Karimnagar.

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

3. Heard the learned counsel for both the parties.

4. The facts leading to filing of the present appeal are, briefly, as follows: The plaintiff is the owner of an extent of Acs.0.30 guntas in survey No.341 and Acs.0.31 guntas in survey No.342 of Nagunoor Village of erstwhile Karimnagar Taluk. The plaintiff also dug a well in the suit schedule property and fixed an electrical motor to it, about 18 years back. The remaining land in survey Nos.341 and 342 belongs to Shaheemunnisa Begum and Syed Sirajuddin Ahmed. The defendants have been cultivating the remaining land on crop-share basis. The defendants denied the title of the plaintiff. Hence, the plaintiff filed the suit for declaration of title and consequential perpetual injunction in respect of the suit schedule property. The defendants filed written statement denying all the averments made in the plaint, *inter alia*, contending that the suit schedule property measuring Acs.0.1½ guntas is situated on the east of the road leading from Karimnagar to Luxettipet. The defendants have been in possession and enjoyment of the same for the last 28 years and perfected their

title. The well is situated on the west of the road. The plaintiff is having property on the western side of the road. Originally, one Abdul Razak was the pattadar of the land covered by survey Nos.340, 341 and 342 and he sold 1/4th of the property to one K.Ailaiah and 3/4th to one V.Rajaiah about 32 years ago. The said Rajaiah sold the property to defendant No.1 about 29 years back. The plaintiff has nothing to do with the suit schedule property; hence, the suit is liable to be dismissed.

5. Basing on the above pleadings, the trial Court framed the following issues for trial:

- (1) Whether the plaintiff is the owner and possessor of the suit property and if so, is he entitled for the injunction prayed for?
- (2) To what relief?

6. On behalf of the plaintiff, P.Ws.1 to 4 were examined and Exs.A.1 to A.18 were marked. On behalf of defendants, D.Ws.1 to 4 were examined and Exs.B.1 to B.19 were marked. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff failed to prove his title over the suit schedule property, and dismissed the suit. Feeling aggrieved by the judgment and decree dated 05.8.1994 passed by the trial Court, the plaintiff preferred A.S.No.5 of 1995. The first appellate Court, after re-appraising the material available on record, dismissed the appeal. The unsuccessful plaintiff preferred the present second appeal.

7. The questions of law urged by the learned counsel for the appellant are:

- (1) Whether the plaintiff is entitled for declaration of title basing on Khasra pahanies?

(2) Whether the findings recorded by the Courts below are perverse?

8. Both the questions are interlinked with each other; hence, this Court is inclined to answer both the questions simultaneously in order to avoid recapitulation of facts and evidence.

9. The plaintiff filed the suit for declaration and consequential perpetual injunction in respect of an extent of Acs.0.30 guntas in survey No.341 and Acs.0.31 guntas in survey No.342 of Nagunoor Village of erstwhile Karimnagar Taluk. To prove the case, the plaintiff mainly relied on Exs.A.1 to A.18 apart from the oral evidence. Learned counsel for appellant submitted that the Courts below have not considered Exs.A.17 and A.18-Khasra Pahanies, Ex.A.6 Rythu passbook issued in the name of the plaintiff. In Exs.A.17 and A.18-Khasra Pahanies the names of plaintiff and first defendant are shown in possessor column; however, the extent of land owned by the plaintiff is not specifically mentioned. The date of issuance of Ex.A.6-Rythu pass book is not proved by the plaintiff.

10. It is needless to say that the Mandal Revenue Officer/ Tahsildar will issue title deed books in favour of owners. Interestingly, Ex.A.6 was issued by the Revenue Inspector; hence, no credence can be attached to it. Exs.A.7 to A.15 are electricity bills. Despite the Pahanies were issued by a competent authority, Court cannot declare the title of a person basing on such pahanies. As observed earlier, the extent of the land owned by the plaintiff is not mentioned in Exs.A.17 and A.18-Khasra Pahanies. On the other hand, Exs.B.1 to B.13 and B.15 to B.17-Khasra Pahanis

filed by the defendants up to the year 1991 show the extent in which defendants are in possession of the property.

11. It is the case of the plaintiff that he purchased the property from the original owner. Except his self-served testimony, there is no other convincing evidence to establish that he purchased the suit schedule property from the original owner. In the absence of sale deed, it is not safe to place reliance on the oral testimony of P.W.1. The material available on record falls short to establish that the plaintiff is the owner of the suit schedule property.

12. One of the contentions raised by the plaintiff is that a well is existing in the suit schedule property. Except the self-served testimony of P.W.1, there is no other convincing evidence to establish the existence of well in the suit schedule property.

13. The trial Court held that the plaintiff is not entitled for the relief of declaration that he is the owner of the suit schedule property. The first appellate Court also gave a specific finding that the plaintiff is not entitled for the relief of declaration and consequential perpetual injunction. As observed earlier, Khasra pahanies and title deed books filed by the plaintiff are no way helpful to the plaintiff to establish his possession over the suit schedule property; therefore, the plaintiff is not entitled to consequential relief of perpetual injunction. The Courts below discarded Exs.A.6, A.17 and A.18. I am fully endorsing the finding recorded by the Courts below on that aspect. Viewed from any angle, I am unable to accede to the contention of learned counsel for the appellant that the findings recorded by the Courts below are perverse and are liable to be set aside.

14. In **Municipal Committee, Hoshiarpur v. Punjab SEB**¹, while dealing with the scope of Section 100 of C.P.C., the Hon'ble apex Court held at paragraph No.16 as follows:

16. ... 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 CPC. ...

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the questions 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.

16. Hence, the second appeal is dismissed. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 19.11.2018
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¹ (2010) 13 SCC 216