

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL Nos.538, 539, 540, 541, 542 AND 543 OF 2000

COMMON JUDGMENT:

All these Second Appeals are filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the common judgment and decrees dated 30.11.1999 passed in A.S. Nos.69, 70, 71, 72, 73 and 74 of 1997 on the file of the III Additional District Judge, Warangal (for short, 'first appellate court'), wherein the first appellate court while dismissing all the appeals, confirmed the common judgment and decrees dated 13.08.1997 passed in O.S. Nos.117, 278, 279, 280, 281 and 282 of 1993 on the file of the Principal District Munsif, Warangal (for short, 'the trial court'). The original suits filed by the respondents-plaintiffs for the relief of permanent injunction were decreed and the same was confirmed by the first appellate court. All the Second Appeals are filed by the defendants 1 to 3 against the plaintiffs and defendant No.4.

2. Heard the learned counsel for the appellants-defendants 1 to 3, apart from perusing the material on record. Though notices are served, there is no representation on behalf of the respondents-plaintiffs.

3. For the sake of convenience, the parties hereinafter are referred to as they were arrayed before the trial Court.

4. While dealing with the subject matter, this Court on 19.07.2000, was pleased to admit these Second Appeals and framed the following the substantial question of law:

"Whether the lower appellate court is correct in dismissing the appeal without framing the points and without discussing the oral and documentary evidence adduced on behalf of the appellants, though it is the final court of fact?"

5. Learned counsel for the defendants 1 to 3-appellants herein would contend that the defendants are in possession of the suit schedule plots and they have filed Exs.B.1 to B.11 and Exs.B.15 to B.35, which are land revenue payment receipts and certified copies of pahanies, wherein the names of the defendants and their father are mentioned; there is no single document to show that the plaintiffs are in possession and enjoyment of the suit schedule land; the vendor of the plaintiffs has no title or interest over the suit schedule; the findings of both the Courts below are perverse and not in tune with the evidence and the documents placed on record; and ultimately, prayed to set aside the common judgments and decrees of both the Courts below.

6. To adjudicate the *lis* and to answer the substantial question of law, it is necessary to refer to the relevant pleadings of the parties.

(a) The plaintiffs filed original suits against the defendants 1 to 4 for permanent injunction. The plaintiffs averred that they have purchased respective suit schedule lands under different registered sale deeds from the original vendor and they are in possession of the same. The defendants have no right, title or interest over the suit schedule lands and they are causing illegal interference with the peaceful possession and enjoyment of the plaintiffs over the suit schedule lands. The plaintiffs, apprehending that the defendants may encroach into the suit schedule lands, have filed the suits for grant of permanent injunction in their favour restraining the defendants from doing their illegal acts.

(b) On other hand, the defendants 1 and 3 filed written statement denying the ownership and possession of the plaintiffs over the suit schedule lands and the alleged purchase. The defendants contended that they are in possession over the suit schedule land and they never tried to interfere with the possession of the plaintiffs as alleged. The question of the defendants interfering

with the possession of the plaintiffs over the suit schedule lands does not arise at all. Ultimately, prayed to dismiss all the suits.

(c) Basing on the above pleadings, the trial Court framed the issues separately in all the suits as follows:

O.S. No.117 of 1993:

1. Whether the plaintiff is entitled for permanent injunction against the defendants?
2. Whether the decrees in O.S. No.541 of 1981 on the file of this Court and in O.S. No.57 of 1985 on the file of Principal Sub Court are binding on the plaintiffs?
3. Whether the Court fee paid by the plaintiff is correct?
4. To what relief?

O.S. No.278 of 1993:

1. Whether the plaintiff purchased the suit schedule property under registered sale deed dt.17-10-1984, if so the same is binding on the defendants?
2. Whether the decrees in O.S. No.541 of 1981 and O.S. No.57 of 1985 are binding on the plaintiffs?
3. Whether the defendants are in possession and enjoyment of the schedule property?
4. Whether the plaintiff is entitled mere injunction without prayer for declaration is maintainable?
5. Whether the plaintiff is entitled for permanent injunction?
6. To what relief?

O.S. No.279 of 1993:

1. Whether the plaintiff is entitled for permanent injunction against the defendants?

2. Whether the decrees in O.S. No.541 of 1981 on the file of this Court and in O.S. No.57 of 1985 on the file of Principal Sub Court are binding on the plaintiffs?
3. Whether the Court fee paid by the plaintiff is correct?
4. To what relief?

O.S. No.280 of 1993:

1. Whether the plaintiff purchased the suit schedule property under registered sale deed dt.28-8-1994, if so the same is binding on the defendants?
2. Whether the decrees in O.S. No.541 of 1981 and O.S. No.57 of 1985 are binding on the plaintiffs?
3. Whether the defendants are in possession and enjoyment of the schedule property?
4. Whether the plaintiff is entitled mere injunction without prayer for declaration is maintainable?
5. Whether the plaintiff is entitled for permanent injunction?
6. To what relief?

O.S. No.281 of 1993:

1. Whether the plaintiff purchased the suit schedule property under registered sale deed dt.13-9-1984, if so the same is binding on the defendants?
2. Whether the defendants are in possession and enjoyment of the suit schedule property?
3. Whether the decrees in O.S. No.541 of 1981 and O.S. No.57 of 1985 are binding on the plaintiffs?
3. Whether the suit for mere injunction without prayer for declaration is maintainable?
5. Whether the plaintiff is entitled for permanent injunction?
6. To what relief?

O.S. No.282 of 1993:

1. Whether the plaintiff purchased the suit schedule property under registered sale deed dt.28.8.1984, if so the same is binding on the defendants?
2. Whether the decrees in O.S. No.541 of 1981 and O.S. No.57 of 1985 are binding on the plaintiffs?
3. Whether the defendants are in possession and enjoyment of the schedule property?
4. Whether the suit for mere injunction without prayer for declaration is maintainable?
5. Whether the plaintiff is entitled for permanent injunction?
6. To what relief?

(d) Thereafter, the trial Court clubbed all the suits, conducted joint trial, recorded evidence in O.S. No.117 of 1993. On behalf of the plaintiffs, P.Ws.1 to 4 were examined and Exs.A.1 to A.8 were marked and on behalf of the defendants, D.Ws.1 and 2 were examined and Exs.B.1 to B.35 were marked. The trial Court after considering the entire evidence on record, decreed all the suits, vide common judgment dated 13.08.1997. Aggrieved by the said common judgment, the defendants 1 to 3 preferred appeals before the first appellate court contending that the sale deeds obtained by the plaintiffs were not properly proved; the decrees in favour of the defendants showing their possession and its binding effect was not considered; the competency of the vendor to sell the suit schedule lands in favour of the plaintiffs was not considered; and the plaintiffs failed to prove their possession and no pahanies or revenue receipts were produced by the plaintiffs and the same were produced by the defendants. The first appellate court, after appreciating the entire evidence on record, vide common judgment dated 30.11.1999, was pleased to dismiss all the appeals confirming the common judgment passed by the trial Court. Challenging the said

common judgment passed by the first appellate court, the defendants 1 to 3 preferred the Second Appeals.

7. To substantiate their case, the plaintiffs examined P.Ws.1 to 4 and got marked Exs.A.1 to A.6-registered sale deeds executed in favour of the plaintiffs, Ex.A.7-certified copy of judgment dated 01.08.1984 in C.M.A. No.29 of 1984 on the file of the Additional District Judge, Warangal and Ex.A.8-true copy of plaint in O.S. No.57 of 1985 of Sub Court, Warangal. On behalf of the defendants, D.Ws.1 and 2 were examined and Ex.B.1-certified copy of decree dated 07.12.1987 in O.S. No.541 of 1989 of Principal District Munsif Court, Warangal, Ex.B.2-certified copy of judgment dated 08.07.1994 in O.S. No.279 of 1984 of Principal District MUnsf Court, Warangal, Ex.B.3-certified copy of decree dated 08.07.1994 in O.S. No.279 of 1984 of Principal District Munsif Court, Warangal, Ex.B.4-certified copy of judgment in O.S. No.57 of 1985 dated 06.03.1991 of Principal Sub Court, Warangal, Ex.B.5-certified copy of decree dated 06.03.1991 in O.S. No.57 of 1995 of Principal Sub Court, Warangal, Exs.B.6 to B.10-land revenue receipts, Ex.B.11-office copy of legal notice, Exs.B.12 to B.14-postal acknowledgments and Exs.B.15 to B.35-certified copies of pahanies.

8. The record reveals that the trial Court after considering the evidence on record, held that the defendants are not in possession and enjoyment of the suit schedule lands as on the date of filing of the suits and from 1980 onwards, their claim of adverse possession was not at all supported by any credible evidence in these suits and the defendants have to file suits for declaration of their title, if any, on the ground of adverse possession and for recovery of possession, otherwise their claim was not at all tenable, and ultimately, decreed all the suits in favour of the plaintiffs. The record further reveals that the first appellate court, having analysed the entire oral and documentary evidence, elaborately dealt with all the contentions raised by the

defendants and ultimately, held that the plaintiffs are in possession and enjoyment of the suit schedule lands and negated the contentions raised by the defendants. In view of the same, it cannot be contended before this Court that the first appellate court had not gone into the facts and circumstances of the case and recorded finding with regard to the possession of the persons over the disputed suit schedule lands. Though the first appellate court did not frame a point for determination, but discussed the entire oral and documentary evidence and concluded that the plaintiffs are in possession and enjoyment of the suit schedule lands. The first appellate court had recorded its findings with regard to the factual aspects. The first appellate court had also recorded a specific finding with regard to Ex.B.1-certified copy of decree in O.S. No.541 of 1989 on the file of the Principal District Munsif Court, Warangal, Exs.B.2 and B.3-certified copies of decree and judgments in O.S. No.279 of 1984 on the file of the Principal District Munsif Court, Warangal, Exs.B.4 and B.5-certified copies of judgment and decree in O.S. No.57 of 1985 on the file of the Principal Sub Court, Warangal, Exs.B.6 to B.10-land revenue receipts and Exs.B.15 to B.35-certified copies of pahanies. While dealing with the aforesaid decrees and judgments, the trial Court as well as the first appellate court held that the plaintiffs are not the parties therein and the judgments and decrees in O.S. No.541 of 1989 and O.S. No.57 of 1985 are not binding on the plaintiffs. As on the date of filing of the suits, the plaintiffs have obtained the registered sale deeds under Exs.A.1 to A.6. Further it is held by both the Courts below that P.W.4-D.Venugopal Rao is the original owner and pattedar of the suit schedule lands, from who, the defendants are claiming title and possession over the suit schedule lands. It is further held by both the Courts below that neither the names of the defendants nor the names of the persons, from whom, the defendants are claiming possession and title over the suit schedule property, are not found in the revenue records. Further, the name of P.W.4-D.Venugopal Rao is found in the copies of pahanies marked on

behalf of the defendants. It is also held that on the date of execution of sale deeds, there was no cultivation of the suit schedule property. Ultimately, both the Courts below believed the possession of the plaintiffs over the suit schedule property and acted upon Exs.A.1 to A.6-registered sale deeds. So, in view of these circumstances, the findings of both the Courts below are not perverse. Further, the persons who are in possession are entitled to perpetual injunction. The plaintiffs have proved their possession over the suit schedule lands. Non-framing of specific points by the first appellate court while answering the contentions raised is not a ground to set aside the judgment of the first appellate court.

9. It is appropriate to state that under Section 100 of the C.P.C., the jurisdiction of the High Court to interfere with the judgment of the Courts below is confined to substantial question of law. The findings with regard to the factual aspects by the first appellate court are final. Those findings of facts are not amenable to the jurisdiction of this Court by way of Second Appeal. More so, when there is no substantial question of law. In the circumstances of the case, this Court cannot re-appreciate the evidence and arrive at a different conclusion. Neither inadmissible evidence has been considered nor admissible evidence not acted upon. In view of the facts and circumstances of the case, the findings of the Courts below are not perverse. So, no re-appreciation of entire evidence is warranted in these Second Appeals and further, no question of law much less substantial question of law arise for determination in these Second Appeals. Therefore, all the Second Appeals are devoid of merit and they are liable to be dismissed.

10. In the result, all the Second Appeals are dismissed, confirming the common judgment and decrees dated 30.11.1999 passed by the first appellate court in A.S. Nos.69, 70, 71, 72, 73 and 74 of 1997.

11. Miscellaneous Petitions pending, if any, shall stand dismissed.

There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 16.07.2018
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