

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.311 OF 2013

JUDGMENT:

This Second Appeal is filed, by the defendants, under Section 100 of C.P.C., assailing the judgment and decree dated 23.07.2012 passed in A.S.No.12 of 2006 on the file of the II Additional District Court, Kadapa at Proddatur, wherein and whereby the judgment and decree dated 24.02.2006 passed in O.S.No.203 of 2001 on the file of the Court of the Junior Civil Judge, Jammalamadugu, decreeing the suit filed by the plaintiff for declaration and perpetual injunction, was confirmed.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

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

It is the case of the plaintiff that one Settipalli Bala Sanjeeva Reddy, Chinna Sanjeeva Reddy, Buddha Reddy, Santi Reddy and Sanjeeva Reddy are own brothers and sons of late Sanjeeva Reddy. The sons of late Sanjeeva Reddy have partitioned the joint family property under a partition deed dated 18.06.1937. In the said partition, the father of the plaintiff got 'C' schedule property. The father of the first defendant and grandfather of the second defendant got 'B' schedule property along with open space. After the death of the father of the plaintiff, the plaintiff got the house marked as BEFCB, open space BHJEB and the house marked as EJKFE. After the death of the father of the first defendant, the first

defendant succeeded to his father's share ABCDA house with open space of AGHBA. Defendant Nos.1 and 2 without any right whatsoever interfering with the suit schedule property. Hence, the plaintiff is constrained to file a suit for declaration and perpetual injunction.

4. The second defendant filed a written statement and the same is adopted by the first defendant. The defendants filed written statement denying the averments made in the plaint while admitting the family partition dated 18.06.1937. Defendant Nos.1 and 2 have partitioned their property on 15.10.1972. In the family partition, ABCDA is bifurcated into two houses and northern portion fell to the share of the father of the first defendant while southern portion fell to the share of the second defendant. The first defendant sold away his house to one Dereddy Venkata Reddy in the year 1981. The said Venkata Reddy in turn sold the same to Pedda Sanjeevarayudu. The first defendant sold away his open space BEJHB to one Bapathi Venkata Reddy about 20 years ago. The second defendant purchased the same property from B.Venkata Reddy. The second defendant is the owner of open space shown in the plaint plan as ABEJHGA. Except the second defendant, no other person is having right over the open space. The plaintiff filed the suit with false and frivolous allegations without any cause of action. Hence, the suit is liable to be dismissed.

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

1. Whether the plaintiff is entitled for declaration of his right over the plaint plan marked BHJEB Portion?
 2. Whether the 2nd defendant purchased the plaint plan marked BHJEB site and he got right over the suit property?
 3. Whether the plaintiff is entitled for permanent injunction as prayed for?
 4. Whether there is no cause of action to file the suit?
 5. To what relief?
6. To substantiate the case, before the trial Court, the plaintiff examined himself as PW.1 and got marked Exs.A.1 to A.3. PW.2 is examined to prove that the plaintiff is the owner of the suit schedule property. To demolish the case of the plaintiff, the second defendant examined himself as DW.1 and first defendant examined himself as DW.3 and got marked Ex.B.1. DW.2 is the purchaser from the first defendant.
7. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff is entitled for the relief of declaration and consequential perpetual injunction and consequently, decreed the suit.
8. Feeling aggrieved by the judgment and decree of the trial Court, the defendants preferred A.S.No.12 of 2006 on the file of the II Additional District Court, Kadapa at Proddator. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record, dismissed the appeal. Hence, the defendants preferred the present second appeal.
9. Heard the learned counsel for the appellants and learned counsel for the respondent.
10. The question of law urged by the learned counsel for the appellants is as follows:

“Whether the Courts below misconstrued the recitals of Ex.B.1-family partition deed?”

11. The suit schedule property originally belongs to one Sanjeeva Reddy. Five sons of Sanjeeva Reddy have partitioned the joint family property under a registered partition deed dated 18.06.1937. The father of the plaintiff got ‘C’ schedule property under Ex.A.2. The father of the first defendant and grandfather of the second defendant got ‘B’ schedule property under Ex.A.2. Ex.A.3 is the mortgage deed executed by the mother of the plaintiff in favour of Co-operative Society, Peddapasapula. The recitals of Exs.A.2 and A.3 clearly reveal that the father of the plaintiff got ‘C’ schedule property therein. As seen from the testimony of DWs.1 and 3, they have partitioned the property fell to their share under Ex.B.1-partition deed dated 12.10.1972. It is the case of the plaintiff that the defendants, taking advantage of the recitals of Ex.B.1-partition deed, making attempts to occupy the open site of the plaintiff. There is no dispute between the parties with regard to the recitals of partition deed dated 18.06.1937 i.e., Ex.A.2. The defendants are not entitled to claim more property than the property covered under ‘B’ schedule of Ex.A.2. As seen from the testimony of DW.2, he purchased the property from the first defendant. His testimony further reveals that he sold the same property to the second defendant. For the reasons best known, the defendants did not choose to produce the alleged sale deed executed by first defendant in favour of second defendant. The defendants also failed to produce the sale deed alleged to have been executed by DW.2 in favour of the second defendant. Taking advantage of those two documents, the possibility of making

attempt by the defendants to encroach the vacant site of the plaintiff cannot be ruled out completely. As observed earlier, the defendants are not disputing the recitals of Ex.A.2-partition deed. As per the recitals of Ex.A.2, the father of the plaintiff got house property as well as vacant site i.e., suit schedule property. Likewise, the defendants also got house property and vacant site. It is not the case of the defendants that the suit schedule property belongs to them. The trial Court, after considering the oral and documentary evidence available on record, arrived at a conclusion that the plaintiff established his title over the suit schedule property and decreed the suit. The findings recorded by the trial Court are based on evidence much less legally admissible evidence. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record, without being influenced by the findings recorded by the trial Court, arrived at a conclusion the plaintiff is the owner of the suit schedule property; therefore, he is entitled for the relief of declaration and consequential perpetual injunction and dismissed the appeal. The Courts below have considered the recitals of Ex.B1 in the light of Ex.A.2-partition deed. The recitals of Ex.B.1 are not binding on the plaintiff as he is not a party to the document. The findings recorded by the Courts below are based on evidence much less legally admissible evidence. The first appellate Court is a fact finding final Court. I am fully endorsing with the findings recorded by the Courts below.

12. 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. ...”

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, this Court is of the considered view that there is no question of law much less substantial question of law involved in this appeal. Hence, the appeal is liable to be dismissed.

14. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs.

15. Consequently, Miscellaneous Petitions, if any, pending in this Second Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 09.11.2018
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¹ (2010) 13 SCC 216