

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

SECOND APPEAL No. 394 OF 2000

JUDGMENT:

1. The Second Appeal is filed against the judgment and decree dated 28.07.1999 in Appeal Suit No.4 of 1996 on the file of the Additional Senior Civil Judge, Gudur, Nellore District whereby the appeal preferred against the judgment and decree dated 30.12.1995 in O.S. No.145 of 1990 on the file of the District Munsif, Venkatagiri decreeing the suit filed for permanent injunction, was allowed.

2. The appellant herein is the plaintiff, and the respondents herein are the defendants, in the suit. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed in the trial court.

3. The Second Appeal was admitted on the following substantial question of law.

“Whether the lower appellate court failed to consider the evidence of D.W.1 that he was not cultivating the land after 1989?”

4. To adjudicate the *lis*, it is necessary to refer the pleadings of the parties.

(a) Plaintiff filed the suit for permanent injunction restraining the defendants and their men from interfering with his peaceful possession and enjoyment of the suit schedule

property stating that the schedule property is in his occupation and enjoyment since 1982 and that he occupied Ac.1.60 cents of land in survey no.90/2 of Pularangadipalli village, reclaimed the same and made it fit for cultivation; that prior to that, it was a vacant and Government Anadheenam land; that he had been paying cist for the said land; that the defendants, without manner of right over it, tried to trespass into the same on 09.12.1990 when the plaintiff was doing agricultural operations, and tried to forcibly dispossess the plaintiff.

(b) Defendant No.1 filed written statement denying plaintiff averments, and contended that defendant no.2 is a farm servant of defendant no.1 and that the latter was granted assignment patta with regard to Ac.2.35 cents of dry land in survey no.91/2 and an extent of Ac.1.60 cents of dry land in survey no.90/2 of Pularangadipalli village, by the Tahsildar of Venkatagiri, vide order dated 10.2.1979, and that since then, he had been in possession and enjoyment of the said land; that the suit schedule land is a patta land of defendant no.1 and the plaintiff was never in possession and enjoyment of the suit schedule property, and hence, he prayed to dismiss the suit.

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

- 1) Whether the plaintiff is the owner of the plaint schedule land ?
- 2) Whether the plaintiff is not in possession and enjoyment of the plaint schedule land on the date of filing of this suit ?
- 3) Whether there is any cause of action ?
- 4) To what relief ?

6. During trial, on behalf of the plaintiff, P.W.1 was examined and Exs.A1 to A3 were got marked, and on behalf of defendants, D.W.1 was examined and Exs.B1 to B3 were got marked.

7. The trial Court, upon appreciation of the evidence on record, decreed the suit with costs. Challenging the judgment and decree of the trial Court, the defendants preferred Appeal Suit No.4 of 1996 on the file of the Additional Senior Civil Judge, Gudur. Vide the impugned judgment and decree, the first appellate court allowed the appeal setting aside the judgment and decree of the trial Court. Challenging the same, the present Second Appeal has been preferred by the plaintiff.

8. Heard the learned counsel for the appellant. Though the matter is posted on number of occasions, there is no representation for defendants inspite of service of notice. The Second Appeal is of the year 2000. Hence, it can be disposed of basing on the evidence available on record.

9. Learned counsel for the appellant would contend that the findings of the first appellate court are contrary to law, weight of evidence and probabilities of the case; that the first appellate court ought not to have reversed the findings of the trial court, which are based on proper appreciation of the evidence on record; that the first appellate court did not consider the long established possession of the plaintiff over the suit schedule property; that there are number of documents to substantiate the possession; that Ex.B1-copy of patta is of no use to defendants; that there is specific admission of D.W.1 that he was not cultivating the schedule land after 1989; that Exs.B1 to B3 are not authentic documents and are not helpful to the defendants; that the trial Court rightly decreed the suit for permanent injunction and that the findings of the first appellate court are perverse, and ultimately, prayed to admit the Second Appeal.

10. There cannot be any dispute that, under the amended Section 100 C.P.C., a party aggrieved by the decree passed by the first appellate court has no absolute right of appeal. He can neither challenge the decree on a question of fact or on a question of law. The second appeal lies only where the High Court is satisfied that the case involves a substantial question of law. The word 'substantial' as qualifying 'question of law', means and conveys of having substance, essential, real, of sound worth, important, considerable, fairly arguable. A

substantial question of law should directly and substantially affect the rights of the parties. A question of law can be said to be substantial between the parties if the decision in appeal turns one way or the other on the particular view of law. But, if the question does not affect the decision, it cannot be said to be substantial question between the parties. Recording a finding without any evidence on record; disregard or non-consideration of relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; perverse finding- are some of the questions, which involve substantial questions of law.

11. It is the case of plaintiff that he is in possession and enjoyment of the suit schedule property by paying cist to the government, but the defendants, without any manner of right, tried to trespass into the same and dispossess him. Besides his oral evidence, he filed Ex.A1-true copy of No.II adangal, Ex.A2-certificate issued by the Village Administrative Officer (VAO) and Ex.A3-certified copy of No.II adangal for faslis 1396 to 99, to substantiate his case. Whereas, it is the case of defendants that defendant no.1 was granted assignment patta by the Tahsildar concerned on 10.2.1979 in respect of the subject land and that he is in possession and enjoyment of the same. To substantiate their case, they filed Ex.B1-copy of patta granted in favour of D.W.1, Ex.B2 and B3-cist receipts besides the oral evidence of defendant no.1 as D.W.1.

Having approached the Court for an equitable relief of permanent injunction, it is for the plaintiff to establish his case. As Ex.A1 is a true copy issued by the VAO and not counter signed by the Mandal Revenue Officer concerned, it cannot be looked into. As regards Ex.A1, there is no seal on it and VAO is not competent authority to issue it. Ex.A3 is issued by Head Assistant and not signed by the Mandal Revenue Officer. Even on perusal of recitals in Exs.A1 to A3, there is specific mention in col.no.2 that defendant no.1 is shown as pattadar and plaintiff's name is shown in col.no.13 as occupier. As regards the documents filed by defendants, Ex.B1 is Xerox copy of patta. It is in the name of defendant no.1 for an extent of Ac.1.60 cents in survey no.90/2. Exs.B2 is cist receipt for fasli 1398 dated 26.4.1989 and Ex.B3 is another cist receipt for faslis 1393 to 1397 i.e. preceding 4 years to Ex.B2. These receipts support the case of defendants. The documents filed by the plaintiff also show name of defendant no.1 as pattadar, and of course, name of plaintiff is shown as occupier. Case of the defendants is that patta was given to defendant no.1 by the Government and that he is in possession and enjoyment of the subject land. Exs.B2 and B3 support the possession of defendant no.1. The admission made by defendant no.1 that he was not cultivating the land from 1989, would not show that he was not in possession of the land. It speaks only about his non-cultivation. The first appellate court elaborately dealt with

the documents and the oral evidence on record and held that plaintiff is not entitled to perpetual injunction against the defendants. The findings of the first appellate Court are not shown to be perverse or not based on record.

12. As regards the appreciation of the evidence on record is concerned, the first appellate court dealt with all the aspects in right perspective, and neither any inadmissible evidence is admitted, nor any admissible evidence was not acted upon, by the first appellate court. While reversing the judgment and decree of the trial Court, the first appellate court gave elaborate reasons. The findings of the first appellate court are based on the evidence. None of the findings is shown to be perverse. The findings are based on record and there is no infirmity. There are no grounds to take a different view. The substantial question of law is only on factual aspects. Under these circumstances, no question of law, much less substantial question of law, as contended by the appellant/defendant to deal with under Section 100 of the Code of Civil Procedure, 1908 comes up for determination in the Second Appeal. The Second Appeal is devoid of merit and is liable to be dismissed.

13. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 28.07.1999 in Appeal Suit No.4 of 1996 on the file of the Additional Senior Civil Judge,

Gudur, Nellore District. There is no order as to costs of the Second Appeal.

Miscellaneous Petitions pending, if any, in the Second Appeal shall stand closed.

02.08.2018
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(Dr.SA, J.)



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