

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.752 of 2000

JUDGMENT:

This appeal is filed by the plaintiff, under Section 100 of CPC, assailing the judgment and decree dated 23.3.1999 passed in A.S. No.84 of 1996 on the file of the Principal District Court, Ranga Reddy District.

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 a registered Association, by name, Nether Springs Christian Association, established for the upliftment of Christian community, consisting of ten members including first defendant. The ten members of the plaintiff-Association were allotted plots by the American Mennonite Brethern Mission, Shamshabad, on 17.3.1956 out of Acs.5.06 guntas in survey No.620 of Shamshabad. A stipulation was incorporated in the allotment letter to the effect that plots shall not be sold to third parties but the members can reside therein by constructing houses. Except the first defendant, the other members have constructed houses in their plots. On 12.2.1989 first defendant agreed to sell plot No.9, which was allotted to him, to a non-member i.e., second defendant, in spite of protests made by the other members. The first defendant flouted the conditions stipulated in the agreement dated 17.3.1956 and second

respondent is trying to make construction in plot No.9. Hence, the plaintiff-Association filed the suit for mandatory injunction.

5. The first respondent remained *ex parte*.

6. The second defendant filed written statement denying all the averments made in the plaint, *inter alia*, contending that an extent of Acs.0.17 guntas in survey No.620 of Shamshabad Village, Ranga Reddy District, was sold to first defendant by J.J. Deck, S/o. John Deck. First defendant sold an extent of 875 Sq.yards to M.J.Kumpaiah in the year 1977. The said Kumpaiah made constructions in the site purchased by him. This defendant purchased an extent of 239 Sq.yards from first defendant under registered sale deed dated 01.4.1982. This defendant constructed house up to roof level, after obtaining necessary permission from Shamshabad Gram Panchayat. The plaintiff-Association has no right whatsoever in the suit schedule property. Hence, the suit is liable to be dismissed.

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

(1) Whether the plaintiffs are entitled for injunction as prayed for?

(2) To what relief?

8. On behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A.1 to A.20 were marked. On behalf of second defendant, D.W.1 was examined and Exs.B.1 to B.7 were marked. Basing on the oral, documentary evidence and other material available on record, the trial Court granted injunction restraining the defendants from interfering with plot No.9 in survey No.620 of

Shamshabad village. Feeling aggrieved by the decree and judgment dated 28.6.1996 passed in O.S.No.74 of 1984 on the file of the Principal District Munsif Court, Hyderabad West and South, Ranga Reddy District, second defendant preferred the appeal. The first appellate Court, after re-appraising the oral and documentary evidence available on record, arrived at a conclusion that the plaintiff is not entitled for the relief of injunction, and allowed the appeal by setting aside the decree and judgment of the trial Court. Hence, the unsuccessful plaintiff preferred the second appeal.

9. The question of law raised by the learned counsel for the appellant is:

Whether there are any grounds to interfere with the findings recorded by the first appellate Court?

10. The first defendant is one of the members of the plaintiff-Association. The American Mennonite Brethern Mission, Shamshabad allotted plots to the members of plaintiff-Association including first defendant. The first defendant sold the plot under Ex.B.2 registered sale deed dated 13.1.1986 in favour of second defendant.

11. The contention of plaintiff is that first defendant has no right whatsoever to sell the plot to non-members of the plaintiff-Association. In order to substantiate the stand, the plaintiff mainly placed reliance on Ex.A.1-Allotment letter dated 17.3.1956, wherein certain conditions are imposed. Admittedly, first defendant is not the signatory of Ex.A.1 letter; therefore, the terms of which are not binding on first defendant. The trial Court made the observation, "*Therefore, Ex.B.2 sale deed can simply be ignored in the present suit.*". No reasons are assigned by the trial Court for

ignoring Ex.B.2 sale deed. When the plaintiff admitted Ex.B.2 sale deed, this Court is unable to understand why the trial Court ignored the same. Unless and until contrary is proved, the Court can place place reliance on the recitals of Ex.B.2 sale deed. The plaintiff did not seek the relief of declaration to declare Ex.B.2 sale deed dated 13.1.1986 as null and void. In the absence of seeking of such a relief, the Court cannot ignore Ex.B.2 sale deed on flimsy and untenable grounds. It is not in dispute that the second defendant filed O.S.No.57 of 1986 against the plaintiff seeking perpetual injunction. A perusal of Ex.B.4 certified copy of the decree in O.S.No.57 of 1986 clearly reveals that the trial Court granted injunction in favour of second defendant restraining the plaintiff herein not to interfere with the suit schedule property. The schedule property covered in Ex.B.4 and the present suit is one and the same. For one reason or the other, the plaintiff did not prefer appeal challenging the decree in O.S.No.57 of 1986; hence, it became final and is binding on the plaintiff. The trial Court lost sight of this aspect and granted permanent injunction in favour of the plaintiff. The trial Court has not given any specific finding that the plaintiff has been in possession and enjoyment of the suit schedule property more particularly as on the date of filing of the suit. The first appellate Court rightly arrived at a conclusion that Ex.A.1 letter is not binding on first defendant as he is not a party to it. The first appellate Court allowed the appeal and consequently dismissed the suit filed by the plaintiff basing on Ex.B.2 sale deed. The recitals of Ex.B.2 clearly reveal that second defendant has been in possession and enjoyment of the suit schedule property since 13.1.1986.

12. The findings recorded by the first appellate Court are based on oral and documentary evidence available on record. The first appellate Court has assigned reasons much less cogent and valid reasons to its findings. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the first appellate Court are perverse and liable to be dismissed. On the other hand, the findings recorded by the trial Court are not sustainable either on facts or in law. There is no question of law much less substantial question of law in this second appeal warranting interference of this Court, while exercising the jurisdiction under Section 100 of CPC.

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

Date: 19.11.2018
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T.SUNIL CHOWDARY, J

