

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.623 OF 2000

JUDGMENT:

This Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the judgment dated 17.12.1999 in A.S. No.32 of 1994 on the file of the Additional District Judge, Medak at Sangareddy (for short, 'first appellate court'), wherein the first appellate court, while allowing the appeal, set aside the judgment and decree dated 31.08.1994 passed in O.S. No.61 of 1990 on the file of the District Munsif, Narayankhed (for short, 'the trial court') and decreed the original suit as prayed for. The original suit was filed by the respondents herein-plaintiffs for grant of perpetual injunction restraining the appellants herein-defendants from interfering with the peaceful possession and enjoyment of the respondents-plaintiffs over the suit schedule property in Sy.No.72/AA, admeasuring Acs.6-15 guntas, situated at Chapta 'K' village of Narayankhed Mandal, District Medak.

2. Heard the learned counsel for the appellants-defendants and the learned counsel for the respondents-plaintiffs, apart from perusing the material on record.

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

4. While admitting the Second Appeal on 18.08.2000, this Court framed the following substantial questions of law for consideration:

(1) In a suit for perpetual injunction, the mutation of names under Ex.B.5, amounts to dispossessing the parties who are in possession as per Exs.B.7 to B.9?

(2) The plaintiffs without opting declaration of title and for consequential relief, can maintain the suit for perpetual injunction to dispossess the defendants from possession?

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

(a) The suit schedule land bearing Sy.No.72/AA admeasuring Acs.6-15 guntas was purchased by the father of the plaintiffs about 40 years back and their father was in possession and enjoyment over the said property till his death and thereafter, the plaintiffs are in possession and enjoyment of the suit schedule property as his legal heirs. The patta was in the name of their father and in the year 1989-90, the patta of the suit schedule land was mutated in the names of the plaintiffs and the plaintiffs are the real brothers living jointly. The plaintiffs are the owners and possessors of the suit schedule land and they sowed sun-flower in the property for kharif season for 1990-91. The defendants have no right or concern over the suit schedule property and they demanded the plaintiffs for giving lease of the suit schedule land, for which the plaintiffs denied. Thereafter, the defendants and their henchmen with an ulterior motive are causing loss and harm to the plaintiffs and trying to encroach into the suit schedule land and tried to damage the standing crop, which would cause great irreparable loss to the plaintiffs.

(b) The defendants filed written statement denying all the averments made in the plaint and contended that they are in possession and enjoyment of the suit schedule land and the plaintiffs are very influential persons and they colluded with the revenue authorities and got the pattas mutated in their names illegally. When the plaintiffs are not in possession of the suit schedule property, the question of sending the plaintiffs out of the suit schedule land does not arise and the plaintiffs have no right or title over the suit schedule land. The 1st

defendant purchased land in Sy.No.72 admeasuring Acs.6-15 guntas, situated at Chapta 'K' village from Sulthana Sab, who is father of the plaintiffs and that defendants 2 to 5 are the sons of the 1st defendant and the 1st defendant purchased the suit schedule land for a consideration of Rs.6,250/- and that the sale consideration paid to Sulthana Sab, in turn, the said Sulthana Sab handed over the possession of the said land and executed the sale document on Rs.10/- stamp paper on 27.05.1972 in the presence of witnesses Ravan and Kulgonda of Chapta 'K' village and that the said Sulthana Sab promised the 1st defendant to get the patta of the land transferred in the name of the 1st defendant as the 1st defendant is an illiterate person. After death of Sulthana Sab, the father of the plaintiffs and the 1st defendant approached the revenue officials and submitted an application to transfer the patta of the suit land in R.O.R. on 22.06.1989, but unfortunately, the said R.O.R. is not implemented. Later, the plaintiffs by misrepresenting the facts, got the patta in their name in the year 1990. The entries in the revenue records are nominal and not binding on the defendants. After filing of the suit by the plaintiffs, the defendants filed an application before the Mandal Revenue Officer, Narayankhed to conduct an enquiry about the possession over the suit schedule land and after enquiry, it is clearly established that the defendants are in possession and enjoyment over the suit schedule land without any interference from any body much less by the plaintiffs irrespective of the revenue records and that the defendants are the absolute owners and pattedars of the land in Sy.No.72/AA admeasuring Acs.6-15 guntas situated at Chapta 'K' village and they are in peaceful possession and enjoyment over the suit schedule land. The plaintiffs taking advantage of nominal entries in the revenue records, trying to knock away the suit schedule land without any right.

(c) Basing on the pleadings, the trial Court framed the following issues:

- i) Whether the defendant No.1 purchased the suit land from the plaintiffs' father or not?

ii) Whether the plaintiffs are entitled to injunction as prayed for?

iii) To what relief?

(d) The trial Court after considering the evidence of P.Ws.1 to 4 and the documents Exs.A.1 to A.4 marked on behalf of the plaintiffs and the evidence of D.Ws.1 to 5 and the documents Exs.B.1 to B.10 marked on behalf of the defendants, dismissed the suit, vide judgment and decree dated 31.08.1994, holding that the plaintiffs failed to establish that they are in possession of the suit schedule property on the date of filing of the suit. Aggrieved by the said judgment and decree, the plaintiffs preferred A.S. No.32 of 1994 and the first appellate court, while dealing with the matter, vide judgment and decree dated 17.12.1999, was pleased to allow the appeal by setting aside the judgment and decree passed by the trial Court and decreed the suit as prayed for. Challenging the said decree and judgment passed by the first appellate court, the plaintiffs preferred the second appeal.

7. Learned counsel for the defendants-appellants herein would contend that the judgment and decree passed by the first appellate court is contrary to law and facts; the first appellate court grossly erred in dealing with Exs.B.2 to B.5, which clearly establishes that the defendants are in possession of the suit schedule land; the trial Court rightly dismissed the suit filed by the plaintiff, whereas the first appellate court grossly mis-read the evidence and committed grave illegality in rejecting Ex.B.2; and ultimately, prayed to allow the second appeal by setting aside the judgment and decree passed by the first appellate court.

8. Learned counsel for the plaintiffs-respondents herein would contend that the trial Court erroneously dismissed the suit without considering the evidence on record; the first appellate court rightly decreed the suit after

appreciating the entire evidence on record; there are no grounds to interfere with the findings of the first appellate court; no substantial questions of law do arise for determination in this second appeal; and ultimately, prayed to dismiss the second appeal.

9. 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 nor 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 findings are some of the questions, which involve substantial questions of law.

10. Originally, the suit was filed by the plaintiffs for perpetual injunction and the trial Court was pleased to dismiss the suit by way of judgment and decree dated 17.12.1999. Aggrieved by the same, the plaintiffs preferred A.S. No.32 of 1994 and the first appellate court was pleased to decree the suit in favour of the plaintiffs granting perpetual injunction. The specific case of the plaintiffs is that they are the owners and possessors of the suit schedule property and they inherited the same from their father. The case of the defendants is that the 1st defendant purchased the suit schedule property from the father of the plaintiffs, by name Sulthana Sab, under Ex.B.2-original unregistered sale deed

dated 11.05.1972. Though number of documents were marked, the defendants in the oral evidence, stated that they have been paying the land revenue, but no land revenue receipt is filed. Ex.B.2 in an unregistered sale deed, under which, the 1st defendant said to have purchased the suit schedule land and it does not convey any title in favour of the 1st defendant. Ex.A.1-R.O.R. for the year 1979-80, Ex.A.2-certified copy of pahani for the year 1986-87, Ex.A.3-certified copy of faisal patti for the year 1989-90 and Ex.A.4-certified copy of pahani for the year 1989-90 show the possession of the plaintiffs over the suit schedule property on the date of filing of the suit and prior to that. The defendants have placed records under Ex.B.6-pahani for the year 1988-89, Ex.B.7-pahani for the year 1989-90, Ex.B.8-pahani for the year 1990-91, Ex.B.9-pahani for the year 1991-92 and Ex.B.10-pahani for the year 1992-93. These documents came into existence after filing of the suit by the plaintiffs. So, the *lis pendence* applies. The enquiry was conducted by the M.R.O. and the finding given by him stating that the defendants are in possession of the suit schedule property is not helpful to the case of the defendants. It is pertinent to state that the suit schedule property said to have been purchased under Ex.B.2-original unregistered sale deed by the 1st defendant on 11.05.1972. The subject suit was filed before the trial Court on 22.10.1990. Had the defendants are in possession of the suit schedule property pursuant to the purchase made by them under Ex.B.2, they would have filed land revenue receipts as well as copies of revenue record, such as, adangals, pahanies, etc., to show the possession of the 1st defendant over the suit schedule property prior to the date of filing of the suit. No such document is available on record. The defendants have admitted the title of the father of the plaintiffs, by name Sulthana Sab. So, it is for the defendants to prove the sale as well as the possession over the suit schedule property on the date of filing of the suit. The first appellate court had elaborately dealt with Exs.B.7 to B.9 pahanies and held that they are not helpful to the case of the defendants. In column

Nos.12 and 13 of the said documents, the name of pattedar and possessor is mentioned, which is against the defendants. The first appellate court having appreciated the oral and documentary evidence on record, recorded a clear finding that the plaintiffs are the owners and possessors of the suit schedule property. The substantial question raised in this second appeal relates to the mutation of the names under Ex.B.5, the entries appearing in documents Exs.B.7 to B.9 was elaborately discussed, dealt and answered by the first appellate court. There is no infirmity in the said finding of the first appellate court. The second substantial question of law is that the plaintiffs without obtaining declaration of title can maintain a suit for perpetual injunction. Originally, the suit was filed by the plaintiffs for perpetual injunction. The plaintiffs are also claiming title to the property by inheritance. When there is interference by the defendants, certainly, a suit for perpetual injunction is maintainable. This aspect had been dealt with by the first appellate court and answered against the defendants. The same cannot be dealt with in this second appeal. The suit was rightly decreed by the first appellate court. There is no infirmity.

11. 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 Court below is confined to substantial question of law. The findings recorded 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. The first appellate court had elaborately dealt with regard to the possession of the plaintiffs over the suit schedule property. 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. Viewing from any angle, no questions of law much less substantial questions of law do arise for determination in this second appeal. Therefore, this second appeal is devoid of merit and is liable to be dismissed.

12. In the result, the Second Appeal is dismissed, confirming the judgment and decree dated 17.12.1999 in A.S. No.32 of 1994 on the file of the Additional District Judge, Medak at Sangareddy. Interim suspension granted on 18.08.2000 in C.M.P. No.13148 of 2000 stands vacated and miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 23.10.2018

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