

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

SECOND APPEAL No. 693 OF 2000

JUDGMENT:

1. The Second Appeal is filed against the judgment and decree dated 24.09.1999 in Appeal Suit No.57 of 1996 on the file of the District Judge, Vizianagaram, whereby the appeal preferred against judgment and decree dated 28.02.1996 in O.S. No.111 of 1989 on the file of the District Munsif, Srungavarapukota was partly allowed.

2. The appellant herein is defendant no.2, the respondents 1 to 3 herein are the plaintiffs and respondent no.4 herein is defendant no.1, 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 questions of law.

“a) The lower appellate court having rightly agreed with trial court that plaintiffs are not entitled for declaration and injunction in respect of trees on Gedda Poramboke in Sy.No.4/3 as it belongs to Government in modifying the decree ?

b) Whether the lower appellate court was right in modifying the decree basing on Ex.A14 xerox copy of a letter produced at appellate stage, and not proved and which is not even secondary evidence under Section 63 of Evidence Act in modifying the decree ?”

4. To adjudicate the *lis*, it is necessary to refer to admitted and disputed facts.

(a) The plaintiffs filed the suit stating that the plaint schedule land, which was originally belonged to Sanskrit School, was sold under a registered sale deed dated 12.07.1945 to one Akiri Appalaswamy Dhora, who planted teak, maddi and mango plants therein and reared them, and subsequently, he sold the lands situated in survey nos. 11/4 and 11/6, which include the plaint schedule land, along with trees thereon, to plaintiff no.3 under registered sale deed dated 29.10.1964. Since the date of purchase, the plaintiffs were in peaceful possession and enjoyment with absolute rights. While so, in the month of December, 1987, plaintiffs cut their trees in the schedule land. Thereupon, the Mandal Revenue Officer, Jami issued notice to plaintiffs not to shift those cut trees pending localization of relevant lands. Later, the Survey Inspector found that the trees so cut were situated in survey nos. 11/4 and 11/6. The Sarpanch of defendant no.2 grampanchayat was having longstanding enmity with plaintiffs and therefore was trying to sell away those trees in open auction. On that, plaintiff issued a notice to defendants 1 and 2. Even though, as claimed by the defendant no.2, the said trees were situated in survey no.4/3 and Gedda Poramboke, plaintiffs perfected their title by adverse possession. Hence, the suit for declaration of title and consequential permanent injunction.

(b) Defendant No.1 filed written statement and the same was adopted by defendant No.2. It is stated in the written statement that the plaint schedule land along with trees thereon, form part of survey no.4/3. It is a gedda poramboke and taken over by the Government, which is its owner. Plaintiffs were never in possession and enjoyment of the same and they did not acquire any title thereto by adverse possession. Plaintiffs illegally cut and removed two teak trees in the month of December, 1987, and on coming to know it, officials of defendant no.1 took possession thereof. Hence, it is prayed to dismiss the suit.

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

- (i) whether the plaintiffs are entitled to plaint schedule land and the two trees that were removed?
- (ii) whether the plaintiffs are entitled to the declaration and injunction, as prayed for ?
- (iii) to what relief ?

6. During trial, on behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A1 to A13 were got marked, and on behalf of defendants, D.Ws.1 and 2 were examined and Exs.B1 to B4 were got marked.

7. The trial Court, upon appreciation of the evidence on record, dismissed the suit with costs. Challenging the

judgment and decree of the trial Court, the plaintiffs preferred A.S. No.57 of 1996 on the file of the District Judge, Vizianagaram. In the appeal, photocopy of letter dated 27.09.1991 addressed by the Revenue Divisional Officer, Vizianagaram was marked as Ex.A14 vide order in I.A. No.1221 of 1999. Vide the impugned judgment and decree, the first appellate court partly allowed the appeal declaring that plaintiffs are entitled to the two disputed cut trees and also perpetual injunction against defendants 1 and 2, and confirming the rest of the judgment and decree of the trial court. Challenging the same, the present Second Appeal has been preferred by the 2nd defendant.

8. Heard the learned counsel for the appellant, the learned counsel for the respondents and perused the record.

9. Learned counsel for the appellant would contend that the suit schedule two trees are part and parcel of land in survey no.4/3 situated at Shasanapalli village and it is a gedda poromboke vested in the appellant/grampanchayat; that defendant no.2 had placed substantial oral and documentary evidence on record; that the first appellate court, relying on Ex.A14, held that the suit schedule trees are situated in survey no. 11/4, which is erroneous; that the trial court rightly dismissed the suit, and hence, he prayed to set

aside the judgment and decree passed by the first appellate court and confirm the judgment of the trial court.

10. On the other hand, learned counsel for the respondents would contend that the first appellate court rightly appreciated the facts and circumstances of the case and relying on Ex.A14, wherein there is clear mention that the subject two trees were in land covered by survey nos. 11/4 and 11/6; that the appellant-grampanchayat has nothing to do with the said trees as well as the land in survey nos. 11/4 and 11/6; that the first appellate court rightly decreed the suit in part and there is no infirmity; that no substantial question of law emerges for determination and the substantial questions of law raised are only on factual aspects, and ultimately dismiss the Second Appeal.

11. 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.

12. It is the case of the plaintiffs that plaintiff no.3 purchased the lands situated in survey nos.11/4 and 11/6 of Shasanapalli village, along with trees thereon, from one Akiri Appalaswamy Dhora, under registered sale deed dated 29.10.1964, and since the date of purchase, he, along with plaintiffs 1 and 2, who are his sons, has been in possession and enjoyment of the same; that the appellant/defendant no.2 illegally interfered with their enjoyment denying their title. On the other hand, appellant/grampanchayat contended that the land on which the trees are reared is part and parcel of land in survey no.4/3, which is gedda poramboke land belonging to the appellant/ grampanchayat and the said trees are not in the land covered by survey nos.11/4 and 11/6, as contended by the plaintiffs, and that the trees were grown by the grampanchayat; that plaintiffs filed the suit on false averments; that the plaintiffs did not acquire title to the

property even by way of adverse possession. It is its further contention that the plaintiffs cut both the trees in December, 1987 and the defendant no.1 took possession of those trees.

13. While dealing with the subject matter of the suit, the trial Court held that the plaintiffs failed to prove existence of the two trees in the land belonging to them in survey nos. 11/4 and 11/6 of Shasanapalli village; that the trees were wildly grown and they formed part of survey no.4/3 and it is a gedda poramboke belonging to the government, and hence, the plaintiffs are not entitled to any relief. Accordingly, the trial Court dismissed the suit. On appeal, the first appellate court, vide impugned judgment and decree, partly allowed the appeal declaring that plaintiffs are entitled to the two disputed cut trees (hereinafter referred to, as 'disputed trees') and also perpetual injunction against defendants 1 and 2, and confirming the rest of the judgment and decree of the trial court. During pendency of the first appeal, I.A. No.1221 of 1999 was filed by the plaintiffs under Order XLI Rule 27 CPC to adduce additional evidence, and the said I.A. was allowed by the first appellate court and Ex.A14- photocopy of letter dated 27.09.1991 addressed by the Revenue Divisional Officer, Vizianagaram was marked. The first appellate Court elaborately discussed the reliability of Ex.A14 and held that the trial Court rightly rejected the relief of declaration and injunction in respect of the suit schedule property land by

narrating reasons. However, it held that in view of marking of Ex.A14, the plaintiffs could make out a *prima facie* case and the two disputed trees belong to them. The first appellate court ultimately held that Ex.A14 can be relied upon safely as the said document discloses that a letter was addressed by the Revenue Divisional Officer, Vizianagaram to the Mandal Revenue Officer, Jami by marking a copy thereof to defendant no.2 as well as plaintiff no.3, stating *inter alia* that the two disputed trees were situated in survey no.11/4 (which is plaint schedule land). This is based on the report of the Deputy Inspector of Survey. The plaintiffs are claiming those two trees raised by them in survey no.11/4. Ex.A14 would go to show that the two disputed trees were grown in the land covered by survey No.11/4, which is a part of the suit schedule property. Therefore, Ex.A14 negates the claim of the defendants that the said trees were wildy grown in the land situated in survey no.4/3 which is gedda poramboke belonging to the government. The appellate court identified the suit schedule property as part and parcel of survey no.11/4 and not survey no.4/3 as contended by the appellant-grampanchayat. The above finding of the first appellate court is based on evidence on record.

14. 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. When only factual aspects with regard to identity of the suit land and suit trees are in question and the same were rightly determined by the first appellate court, the substantial questions of law as indicated above framed by this Court while admitting the Second Appeal, are only questions on factual aspects of identity of the suit land as well as entitlement of the two disputed trees. In view of the same, no question of law, much less substantial question of law, does arise for determination in the Second Appeal, as contended by the appellant/defendant no.1 to deal with under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal is devoid of merit and is liable to be dismissed.

15. In the result, the Second Appeal is dismissed, confirming judgment and decree dated 24.09.1999 in Appeal Suit No.57 of 1996 on the file of the District Judge, Vizianagaram. There is no order as to costs of the Second Appeal.

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

24.07.2018
DRK

(Dr.SA, J.)

THE HON'BLE DR JUSTICE SHAMEEM AKTHER



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