

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

SECOND APPEAL No.642 of 2018

JUDGMENT:

This Second Appeal under Section 100 of CPC is filed challenging the Decree and Judgment dt. 16.02.2018 in A.S.No.19 of 2011 passed by II Additional District Judge, Kadapa at Poddutur setting aside the judgment and Decree dt. 22.02.2010 in O.S.No.495 of 2007 on the file of Principal Junior Civil Judge at Proddutur.

For convenience of reference, the parties to the appeal will hereinafter be referred as ranked in O.S.No.495 of 2007 by Principal Junior Civil Judge, Proddutur, through out the judgment.

The Plaintiff /Respondent No.1 herein filed the suit for perpetual injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit schedule property while claiming right in the property and that they are in possession and enjoyment of the subject property as on the date of filing the suit and as the defendants/appellants herein are making efforts to infringe or invade their legal right, the plaintiffs filed the above suit restraining them to interfere with their peaceful possession and enjoyment over the subject property.

The defendants/appellants herein set up an independent title to the suit schedule property in Written Statement while denying the possession of the plaintiffs/respondents herein and claimed a specific right by virtue of Ex.B.4—Registered Gift Deed and the Sale Deed marked as Ex.B.5.

Basing on the rival contentions of both parties, the trial Court framed four issues for trial. During trial, on behalf of plaintiffs, Pws. 1 to 4 were examined and Exs. A.1 to A.6 were marked. On behalf of

defendants, Dws. 1 to 5 were examined and Exs. B.1 to 9 were marked.

Upon hearing argument of both the counsel and perusing the material available on record, the trial Court dismissed the suit holding that the plaintiffs/respondents herein failed to establish their lawful possession and enjoyment over the suit schedule property as on the date of filing the suit as there is a discrepancy with regard to the boundaries mentioned in Ex.A.1 and the Schedule annexed to it.

The unsuccessful plaintiffs preferred an appeal before the II Additional District Judge, Kadapat at Proddatur in A.S.No.19 of 2011 and upon hearing both the counsel, the Appellate Court reversed the finding holding that the plaintiffs/ respondents herein successfully proved their contention that they are in possession and enjoyment of the suit schedule property as on the date of filing the suit and the defendants/appellants herein tried to infringe or invade the legal right rights of the plaintiffs/respondents herein and decreed the suit in favour of plaintiffs granting perpetual injunction restraining the defendants/appellants herein from interfering with their peaceful possession and enjoyment of the plaintiffs.

Aggrieved by the Decree and Judgment passed by II Addl. District Judge, Kapada, this Second Appeal is preferred by the appellants/defendants in the suit contending that the plaintiffs failed to establish their right to the property in view of the discrepancy in the boundaries mentioned in Ex.A.1 with reference to the suit schedule annexed to the plaint. Apart from that, the defendants/appellants are able to prove that they are in possession and enjoyment of the schedule property as on the date of filing the suit and formulated the following substantial questions of law:

- a) Whether the Registered Sale Deed dt. 13.05.1969 which is alleged to be executed by the father of the Appellants in favour of respondent's father is genuine or fabricated ?
- b) Whether the boundaries mentioned in schedule property are tallying with Ex.A.1 ?
- c) Whether the respondents established their possession over the schedule property ?
- d) Whether the respondents proved their prima facie, balance of convenience and danger of irreparable loss and damage ?
- e) Whether the respondents entitled the relief of permanent injunction ?

During hearing, the learned counsel for the petitioner formulated Additional Substantial Questions of law, which are as follows :

- (a) Whether the Sale Deed Ex.A.1 can be taken into consideration for grant of perpetual injunction when the boundaries mentioned in the Ex.A.1 are different from that of the boundaries mentioned in the Plaint Schedule Property?
- (b) Whether the Plaintiffs are entitled for grant of perpetual injunction without establishing their title and possession over the plaint schedule property ?
- (c) Whether the Judgment of the lower Appellate Court is valid, when the plaint schedule property was sold by virtue of Ex.B.8 and B.9 to third parties and thus the plaintiffs have no title over the plaint schedule property ?

During hearing, at the stage of admission, the learned counsel for the appellants/defendants contended that there is discrepancy in the eastern boundary of Ex.A.1 and the schedule annexed to the plaint. But the appellate Court did not accept this contention and based on Ex.A.1 concluded that the respondents herein/plaintiffs are in possession and enjoyment of the subject property and granted perpetual injunction restraining the appellants herein from interfering

with their possession and enjoyment and committed a grave error and prayed to allow the appeal.

None of the substantial questions formulated by the counsel for the Appellant are substantial questions of law, but they are questions of facts and the jurisdiction of this Court under Section 100 CPC is limited and this Court can exercise such power to interfere with the findings recorded by the Court below only when the substantial question of law is made.

What is a substantial question of law ?

The test to determine whether a question is a substantial question of law or not was laid down by a Constitution Bench of the Supreme Court in *Chunilal v. Metha and Sons Limited v Century Spg and Mfg. Co.Limited*, (1962 AIR 1314) while determining the said expression occurring in Article 133(1) of the Constitution of India. The Supreme Court laid down the test as follows :

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

The above test laid down by the Supreme Court is to be applied by the High Courts to acquire jurisdiction under Section 100 CPC.

Keeping in view the amendment made in 1976, a High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law which are to be framed at the time of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. A

Judgment rendered by the High Court under Section 100 CPC without following the aforesaid procedure cannot be sustained.

In *M.S.V. Raja v Seenii Thevar*, (Civil Appeal No. 2417 of 1992), it was held by the Supreme Court that the formulation of a substantial question of law may be inferred from the kind of questions actually considered and decided by the High Court in second appeal, even though the substantial question of law were not specifically and separately formulated. The observations made by the Court in this regard are as follows:

“ We are unable to accept the argument of the learned senior counsel for the appellants that the impugned judgment cannot be sustained as no substantial question of law was formulated as required under Section 100 CPC. In para 22 of the judgment the High Court has dealt with substantial questions of law. Whether a finding recorded by both the courts below with no evidence to support it was itself considered as a substantial question of law by the High Court. It is further stated that the other questions considered and dealt with by the learned Judge were also substantial questions of law. Having regard to the questions that were considered and decided by the High Court it cannot be said that substantial questions of law did not arise for consideration and they were not formulated. May be, substantial questions of law were not specifically and separately formulated. In this view we do not find any merit in the argument of the learned counsel in this regard.

To determine the ratio of this case, qua section 100 CPC, the original proposition may be stated as follows:

“ the judgments of High Courts in Second appeals can be sustained if the judgments consider and decide substantial question of law without formulating them specifically and separately .”

Section 100 CPC was amended in 1976 imposing drastic restriction on the High Court's jurisdiction in entertaining a second appeal. Even prior to the 1976 amendment, the first appellate Court was treated as the final Court of facts by the Privy Council. The High Court had no right to sit in appeal on facts. In *Durga Choudhrai v Jawahir Singh Choudhri*, the Privy Council held thus :

“ there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be.

In *Deity Pattabhiramaswamy v S. Hanymayya* (AIR 1959 SC 57) *Subba Rao, J.* (as the learned Chief Justice then was) examined the reasons for evolving the practice and strongly criticised the practice of the High Courts in disposing of second appeals without any substantial question of law involved. The learned judge observed:

“But, notwithstanding such clear and authoritative pronouncements on the scope of the provisions of Section 100, Civil Procedure Code, some learned Judges of the High Courts are disposing of Second Appeals as if they were first appeals. This introduces, apart from the fact that the High Court assumes and exercises a jurisdiction which it does not possess, a gambling element in the litigation and confusion in the mind of the litigant public.”

In *Dudh Nath Pandey v. Suresh Chandra Bhattasali* (AIR 1986 SC 1509), the Supreme Court held that the High Court cannot set aside findings of fact of the first appellate Court and come to a different conclusion on reappraisal of evidence while exercising jurisdiction under Section 100 CPC. In *Annapoorani Ammal v. G. Thangapalm* (1989 (3) SCC 287), the Supreme Court held that a perusal of Section 100 CPC clearly indicates that the High Court had the jurisdiction to interfere only when a substantial question of law is involved and even then it is expected that such a question shall be so framed although the court is not bound by that question as the proviso indicates.”

In view of the limited jurisdiction under Section 100 CPC, this Court must confine only to the substantial question of law.

Undisputedly, the suit is filed for perpetual injunction claiming that the plaintiffs/respondents are in possession and enjoyment of the property as on the date of filing the suit while complaining that the appellants herein/defendants made an attempt to infringe or invade their legal rights of the plaintiffs. In a suit for injunction simplicitor,

the plaintiffs/respondents herein have to establish that they are in lawful possession and enjoyment of the suit schedule property shown in the plaint and the defendants/respondents are making attempts to infringe or invade their legal rights of the plaintiffs. Here, the trial Court, based on the discrepancy in the eastern boundary, dismissed the suit ignoring Ex. A.2—pattadar passbook issued by M.R.O., Rajupalem Mandal and Ex.A.3—three land revenue receipts. Ex.A.4—No.3 Adangal extract dt. 18.07.2007 is sufficient to establish the cultivation of the plaintiffs as on the date of the filing the suit. These documents are suffice to conclude that the respondents/plaintiffs are in possession and enjoyment of the suit schedule property as on the date of filing the suit.

Though the appellants/defendants produced certain documents, none of the documents would show that the appellants are in possession and enjoyment over the subject property annexed to the plaint. The documents produced before the Court are only Genealogical Tree, encumbrance certificate, extract of various sale deeds marked as EXs. B.2 to B.9. When the property in dispute is agricultural land and in normal course of events, the Village Revenue Officer would make necessary entries with regard to cultivation of land, which is *prima facie* sufficient to prove as to the cultivation of the land. But, the trial Court did not consider Exs. A.3 to A.5 and committed error in dismissing the suit on the simple ground that there is a discrepancy in the eastern boundary with reference to Ex.A.1 and the schedule annexed to the plaint. The said finding was reversed by the Appellate Court and concluded that the plaintiffs/respondents herein proved that they are in lawful possession and enjoyment of the plaint schedule property based on the documents available on record. When the plaintiffs are in possession and enjoyment of the subject

property claiming right or title over the subject property, the defendants/appellants made an attempt to infringe or invade the legal rights of the plaintiffs, the plaintiffs filed a suit for perpetual injunction and the alleged threat of interference by the appellants/defendants with the possession and enjoyment of the plaintiffs was substantiated by producing sufficient evidence before the Court by the plaintiffs. Therefore, the findings recorded by the trial Court in reversing the decree and judgment passed by the Principal Junior Civil Judge, Proddatur, cannot be interfered by this Court in view of limited jurisdiction under Section 100 CPC. The plaintiffs need not establish his title as on the date of filing the suit in a suit for injunction simplicitor. Therefore, the observations or the findings if any recorded by the appellate Court are limited for the purpose of deciding the suit for injunction simplicitor and those findings will not come in the way of the appellants/defendants to claim their right in any other suit. Hence, I find no ground to interfere with the findings recorded by the Appellate Court and the appeal is deserves to be dismissed since I find no substantial question of law.

In the result, the Second Appeal is dismissed at the stage of admission.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 06-07-2018.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



SA No. 642 of 2018

Dt. 06 -07-2018

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