

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

SECOND APPEAL No.857 OF 2016

JUDGMENT:

The plaintiff - respondent viz., Dharavath Ramachandru, preferred the present Second Appeal under Section 100 of Code of Civil Procedure, 1908, questioning the judgment and decree dated 30.12.2015, in A.S. No.67 of 2013, passed by the learned VII Additional District Judge, Khammam, whereby and whereunder, the said Appeal Suit preferred by the respondent - defendant viz., Banoth Sakram, was allowed setting aside the judgment and decree dated 11.06.2013 in O.S. No.529 of 2012 passed by the learned Principal Junior Civil Judge, Khammam, in his favour granting perpetual injunction.

2. Heard Sri Rajagopallavan Tayi, learned counsel for the appellant (plaintiff), and Sri G. Bhanu Prasad, learned counsel for the respondent (defendant), and perused the material on record.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the original suit before the trial Court.

4. At the stage of admission, the present Second Appeal is taken up for disposal.

5(a) The regular suit in O.S. No.529 of 2012 is one for perpetual injunction simplicitor. The plaintiff claimed that he is absolute owner and possessor of suit schedule land, by virtue of

inheritance, which consists of Ac.0-09 guntas in Survey No.163/U2 situate at Nandini Thanda, Hamlet of Pedda Thanda Gram Panchayat, Khammam Rural Mandal, Khammam District, and his father's name viz., Balaji is entered in the revenue records in Record of Rights. Pattadar Pass Book and title deed relating to the property were also issued and after the death of his father in the year 2008, he succeeded to the suit schedule property. While so, the defendant unjustly interfered with his peaceful possession and enjoyment over the suit property on 14.09.2012, which he has successfully resisted and since the defendant threatened him with dire consequences, he filed the suit seeking the aforesaid relief.

(b) The suit relief was resisted to by the defendant claiming that he purchased Ac.0-09 guntas in Survey No.163, dry land of Eedulapuram village, Khammam Rural Mandal, for consideration of Rs.1,500/- from Daravath Balaji, who is the father of the plaintiff, under a registered sale deed dated 04.03.1975, within the boundaries, East - Land of Bhukya Somla, West and South - Land of Banoth Sakram (defendant himself), and North - Land of Daravath Lacha.

(c) Later, even the revenue authorities entered his name and issued title deed and passbook. According to him, plaintiff taking undue advantage of the sub-division numbers of Survey No.163, showing his (defendant's) land, the suit property, as his (plaintiff) property, claimed it. He asserts that he has been in possession of the

suit schedule property since the date of purchase under a registered sale deed and, therefore, sought to dismiss the suit.

6. The trial Court settled the following two issues:

“1) Whether the plaintiff is entitled for perpetual injunction ?

2) To what relief ?”

7. During the course of trial, the plaintiff examined himself as PW.1 besides examining one D. Vijaya as PW.2 and marked Exs.A-1 and A-2, whereas, the defendant, on the other hand, examined himself as DW.1 besides examining one M. Rami Reddy, one of the attestors to Ex.B-1, and also marked Exs.B-2 to B-4 to prove his possession over the suit property he claimed.

8. The trial Court, on appreciation of evidence, more particularly, by examining Exs.B-1 to B-4, rather than Exs.A-1 and A-2, initially pointed out the defects or weaknesses in the defendant's case and then taken up Exs.A-1 and A-2 and held that the defendant failed to prove that the property purchased by him under Ex.B-1 is the suit property only. Thus, on those lines, appreciation by the learned trial Court had been, and decreed the suit of the plaintiff.

9. The defendant having got aggrieved, preferred a regular appeal in A.S. No.67 of 2013. The learned lower appellate Judge, on referring to the pleadings of both the parties and the issues settled for

trial, and on hearing both sides, formulated the following points for determination, thus:

- “1. Whether the plaintiff is in possession of plaint schedule property as on the date of filing of the suit and entitled for permanent injunction ?
2. Whether the Judgment of the trial Court is sustainable either on facts or on law?
3. To what relief?”

10(a) The learned lower appellate Court, taking up point Nos.1 and 2 together for discussion and referring to the contentions raised by the learned counsel for the defendant and the plaintiff before him, emphasising that in a suit for perpetual injunction, burden is on the plaintiff to prove that he is in possession of the suit property as on the date of suit and interference by the defendant over the suit property as pleaded in the cause of action. Thereafter, referred to the evidence of PW.1, the documentary evidence under Exs.A-1 and A-2, evidence of DWs.1 and 2, Ex.B-1 sale deed, and the effect of the entries therein.

(b) The learned lower appellate Court also referred to the identity of the land described in the plaint schedule and the details of Exs.A-1 and A-2 and then referred to the evidence of PW.1, who asserts that there were six children to their father viz., D. Krishna, D. Ramchander, D. Srinu, D. Ranga, D. Narayana and D. Ramesh, and out of them four are alive, whereas Krishna and Srinu are no more and thus, the lower appellate Court found that PW.1 has

got five brothers. Then, he refers to the assertion made by PW.1 in his chief-examination that the suit property is the ancestral property of his grandfather and his father succeeded, and after the demise of his father, he got the property.

(c) The learned lower appellate Court, then examined the plaintiff averments and the evidence of this witness and found that the plaintiff did not explain with regard to partition of properties by his father and getting the properties towards his share in the division, and, therefore, pointed out that the burden is on the plaintiff to prove that he got the property in the partition along with his brothers. Incidentally, the learned lower appellate Court also found that PW.1 did not examine his brothers to show that the suit property got by him after the death of his father. This has been the first probability derived by the lower appellate Court in withholding the judgment and decree passed by the trial Court.

(d) The second probability is, admissions made by PW.1 in his cross-examination that his father sold away Ac.0-29 guntas of land in Survey No.163/1/A and an extent of Ac.0-15 guntas in Survey No.163/AA/1, and, thus, sales were also shown in Ex.A-2. Then referred to the cross-examination of PW.1 wherein, he admitted that on 14.09.2012, the suit land was ploughed and cultivated vegetables by somebody, but he has not given any complaint to the police, and, thus, it shows that someone cultivated the land on 14.09.2012 and he has not given any complaint. Thus, this circumstance is also

construed by the learned lower appellate Court as third probability which stands adverse to the plaintiff's case as regards his stand that he is in continuous possession of the suit property.

(e) The fourth probability is based on further admission of PW.1 that the defendant has got land intervened by the channel on the Southern side and PW.1 even admitted that there is some more land belonging to their family at a distance of one furlong to the suit property towards North and also Ac.1-00 of land adjacent to the above land.

(f) The learned lower appellate Court points out that PW.1 admitted that still the suit property is their joint family property and they have not partitioned the same. So, the learned lower appellate Court basing on the assertion of PW.1 that the suit property is still joint family property, held that PW.1 cannot claim exclusive title and possession over the suit property after the death of their father by way of inheritance and, thus, observed that there has been variance between the pleading and proof. Even the learned lower appellate Court found that no document was filed to show his possession and enjoyment over the suit property and it is not the case of the plaintiff that he filed the suit on behalf of his joint family.

(g) The learned lower appellate Court then referred to Exs.B-1 to B-4 and found that the property purchased under Ex.B-1 is shown in Ex.B-2 title deed, and Ex.B-3, which is *pahani* for the year 2001-01

to 2010-11, contents also would show that the defendant is in possession of the land in Survey No.163/AA1/E2 admeasuring Ac.0-09 guntas and even Ex.B-4, another *pahani* dated 11.10.2012 with regard to Survey No.163/AA1/E, for an extent of Ac.0-09 guntas, and held that the defendant could prove that after purchase under Ex.B-1, he has been in possession of the purchased property.

(h) Turning to the plea of forgery taken by the plaintiff, though, it was suggested to DW.1 that signature of D. Balaji, father of the plaintiff, was forged in the sale deed, it was denied by the defendant, and, therefore, the Court found that the plaintiff failed to place any material to substantiate that plea.

(i) The learned lower appellate Court then examined the findings recorded by the trial Court and found the observation of the trial Court that the boundaries in Ex.B-1 are not tallied with the suit property is incorrect. Further, observing that Ex.B-1 relates to the year 1975 and the suit was filed in the year 2012 and due to long length of time, names of the boundaries will be indicating changes and the plaintiff did not file any document to show his possession over the suit property as on the date of the suit and Exs.A-1 and A-2 stood in the name of plaintiff's father, who sold away Ac.0-09 guntas of land in Survey No.163 to the defendant under Ex.B-1 and the said extent is situate at some other place other than the suit property and, therefore, observed that unless the property in the total extent of Survey No.163 is measured with reference to the revenue records by the Mandal

Surveyor, the truth will not come out, more particularly, whether the property claimed by the plaintiff under Ex.A-2 relates to the suit property or whether the property claimed by the defendant under Ex.B-1 relates to the suit property or not, and, thus, observing that in the absence of any positive material with regard to the suit property, the observation of the trial Court that the plaintiff is in possession of the suit property based on Exs.A-1 and A-2 is misconception of fact, and, thereby, allowed the appeal setting aside the judgment and decree passed by the trial Court.

11. Aggrieved over the same, the plaintiff preferred the present second appeal. In the grounds of appeal, the plaintiff formulated the following substantial questions of law, according to him, in paragraph No.8, which are thus:

“a) Can a relief of injunction be negative (*Sic.* negatived) in suit for perpetual injunction when plaintiff has *prima facie* as (*Sic.* has) proved that plaintiff's grandfather is owner of the property and the plaintiff is in possession of the same, on the date of filing of suit.

b) Can relief of injunction be negatived when one of the joint family members seeks a relief of injunction on behalf of all other joint family members in respect of joint family property.

c) Whether injunction be rejected when the defendant claiming title and possession in respect of a different survey number that of the suit schedule property.”

12. Certain other grounds are also agitated, but the question is whether these questions of law, which are formulated by the plaintiff, would constitute substantial questions of law. The very framing of the first question shows that it relates to factual aspect. Therefore, it is to be sidelined.

13. Coming to the second question, as to negating the relief of injunction, even though, one of the joint family members seeks a relief of injunction on behalf of other joint family members in respect of the joint family property, is correct, once again, it relates to factual aspect, but not a legal plea nor a question of law constituting substantial questions of law. The factual aspect dealt with by the learned lower appellate Court would clearly reflect that the plaintiff did not project himself as one of the members of the joint family representing the joint family in seeking the relief of perpetual injunction. The learned lower appellate Court also tendered a finding that the plaintiff has not specifically mentioned anywhere that the suit schedule property had fallen to his share in the division and thus, he has got exclusive right over the suit schedule property. The learned lower appellate court in regard to the admissions made by the plaintiff in his cross-examination that there was no partition for the properties

in their joint family and they were altogether six issues to their parents, out of whom, two are no more, and other three brothers are still alive, certainly, the plaintiff cannot be said that he was suing the defendant on behalf of the joint family. Thus viewed, the question of law formulated in clause (b) of paragraph No.8 does not constitute substantial question of law.

14. Turning to clause (c), it is, no doubt, true, the defendant claimed title and possession in respect of a different survey number, but the lower appellate Court has come out very clearly that the identity of the land covered by Exs.A-1 to A-3, relates to suit schedule property, and the land covered by Ex.B-1 relates to the suit schedule property can only be decided unless a survey is done and localised. The learned lower appellate Court was certain in recording a definite finding that the defendant has proved his possession over the property purchased under Ex.B-1 through Exs.B-3 and B-4 and that that was the reason, the judgment and decree passed by the trial Court was set aside.

15. Even looking at the question of law framed in Clause (c), even to grant a perpetual injunction against the defendant, certainly, there should be an obligation on the part of the defendant to oblige the plaintiff as defined under Section 2 of Specific Relief Act, 1963. Unless, such an obligation being established by the plaintiff, the question of granting perpetual injunction does not arise. This constitutes cardinal principle in either maintaining or rejecting the

relief of perpetual injunction when such a relief is sought for by a party.

16. Thus, not only the substantial questions are not involved and the questions of law formulated do not constitute substantial questions of law, but, also on merits, the plaintiff cannot succeed.

17. Therefore, the present Second Appeal is dismissed, at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present Second Appeal stand dismissed.

February 6, 2018.

PV

A. SHANKAR NARAYANA, J

