

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.569 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 and decree dated 26.02.1999 passed in A.S. No.127 of 1991 on the file of the I Additional District Judge, Krishna District at Machilipatnam (for short, 'first appellate court'), wherein the first appellate court confirmed the judgment and decree dated 21.08.1991 passed in O.S. No.142 of 1987 on the file of the District Munsif, Bantumilli (for short, 'the trial court').

2. In spite of this matter being listed today under the caption "For dismissal", there is no representation on behalf of both sides. Since the second appeal relates to the year 2000, this matter can be disposed of basing on the material available on record.

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

4. It is contended by the defendants-appellants in the grounds of appeal that the judgments and decrees passed by both the Courts are erroneous and against the facts and law; there is no transfer of property under Ex.B.2 in favour of the plaintiff; both the Courts below erred in not considering the evidence adduced by the defendants and the documents marked on behalf of the defendants; the suit schedule property was partitioned by the 1st defendant and his brother covered by Ex.B.2 and they are in possession of the same; the plaintiff was never in possession of the suit schedule property, in such event, the Courts below ought not have granted injunction in her favour; the Courts below did not give a finding with regard to Ex.B.3 mortgage deed; and ultimately,

prayed to allow the second appeal by setting aside the judgments and decrees of both the Courts below.

5. While admitting this second appeal on 05.03.2001, this Court framed the following substantial questions of law for determination:

(1) Whether in the absence of any pleading or proof of any gift in accordance with the provisions of Transfer of Property Act and Registration Act in favour of the mother of plaintiff can the Courts below assume existence of such a gift?

(2) Whether the plaintiff is not necessarily to prove her title and possession incidental for grant of permanent injunction?

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 plaintiff filed the original suit for grant of permanent injunction restraining the defendants and their men from interfering with peaceful possession and enjoyment over the suit schedule property in any manner whatsoever. The plaintiff contended that she is the absolute owner of the suit schedule property. Plaintiff's mother B.Rajamma gifted her property, i.e., Ac.0-85 cents of dry land situated in Chinagollapalem, in equal shares to her two daughters, viz., Bolla Dasamma and the plaintiff, by executing a registered gift deed dated 31.10.1979 with absolute rights and the property was delivered to them on the same day. The plaintiff got eastern side portion and she is in exclusive possession and enjoyment of the same by paying taxes, etc. Thereafter, the defendants, who are close relatives of the plaintiff and have no manner of right or possession over the suit schedule property, interfered with the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

(b) The 1st defendant filed written statement, which was adopted by defendants 2 to 5, denying all the averments made in the plaint and contended that they never wanted to grab the plaintiff's property. The plaintiff's mother Rajamma owned Ac.0-85 cents of land and she has not gifted the said property to her daughters. Even if any gift deed is executed by the plaintiff's mother, it is not valid, as she has no right in the suit schedule property. The property of Ac.0-85 cents was purchased by the 1st defendant and his brother in the name of their mother and partitioned into three equal shares and they are in possession of respective shares.

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

- 1) Whether the plaintiff is entitled to the injunction as prayed for?
- 2) To what relief?

(d) Basing the evidence of P.Ws.1 to 4 and the documents Exs.A.1 to A.5 marked on behalf of the plaintiff and the evidence of D.Ws.1 to 5 and the documents Exs.B.1 to B.5 marked on behalf of the defendants, the trial Court decreed the suit for permanent injunction restraining the defendants and their men from interfering with possession and enjoyment of the plaintiff over the suit schedule property, vide judgment and decree dated 21.08.1991. Aggrieved by the said judgment and decree of the trial Court, the defendants preferred A.S. No.127 of 1991 and the first appellate court, after appreciating the evidence on record, vide decree and judgment dated 26.02.1999, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Questioning the said judgment and decree passed by the first appellate court, the defendants filed this second appeal.

7. In view of the contentions of both sides, the only point that arises for determination is, whether the concurrent findings of both the Courts below are liable to be set aside?

8. 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 findings are some of the questions, which involve substantial questions of law.

9. The record reveals that the original suit was filed by the plaintiff for grant of permanent injunction in respect of Ac.0-85 cents in Survey No.237/1, situated at Chinagollapalem. As per the evidence on record, the suit schedule property was purchased by the plaintiff's maternal grand-mother Bolla Seethamma in the year 1960. She has two sons and one daughter. The said Seethamma gifted the suit schedule land, i.e., Ac.0-85 cents, to her daughter B.Rajamma and the said Rajamma, in turn, gifted the same to her two daughters, i.e., the plaintiff and P.W.4-Bolla Dasamma. Pursuant to the said gift, the plaintiff has been in possession and enjoyment of the suit schedule property and the

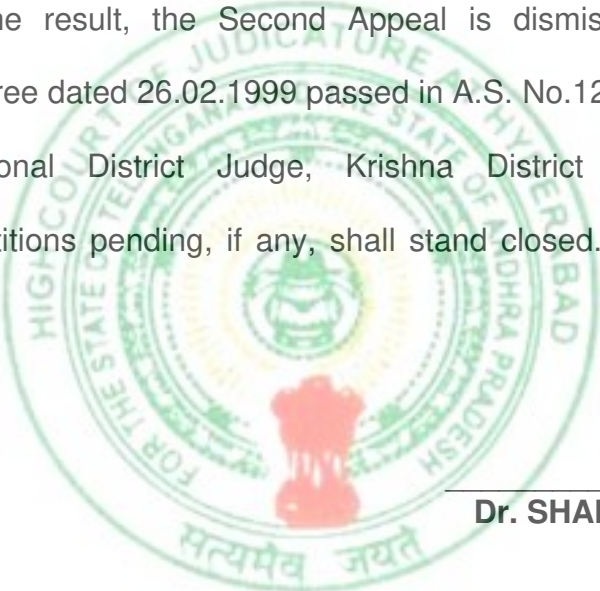
defendants have no manner of right and they are interfering with the possession and enjoyment of the plaintiff over the suit schedule property. There is also evidence of P.W.2-mother of P.W.1 to that effect. P.W.3-father of the plaintiff and P.W.4-sister of the plaintiff supported the plaintiff's case. The gift deed executed in favour of the plaintiff was marked as Ex.A.1. Exs.A.2 to A.4 are the land revenue payment receipts. On behalf of the defendants, D.Ws.1 to 5 were examined and Exs.B.1 to B.5 were marked. Defendants are close relatives of the plaintiff. The revenue record filed by the defendants shows that it relates to the land covered by Sy.Ns.231/2, 231/3 and 231/4. It is different from the suit schedule land bearing Sy.No.237/1 and further some of the documents filed on behalf of the defendants relates to subsequent years of filing of the suit. Examining the evidence of D.Ws.1 to 5 and the documents marked on behalf of the defendants, both the Courts below held that the evidence and the documents cannot be relied on to prove the possession of the defendants over the suit schedule land on the date of the suit. On the other hand, the documents filed on behalf of the plaintiff, i.e., Exs.A.1 to A.5, are corroborated with the evidence of P.W.1 and also reflects the possession of the plaintiff over the suit schedule land. The trial Court as well as the first appellate court have elaborately dealt with the aspect of possession of the plaintiff over the suit schedule property and granted the relief of permanent injunction in favour of the plaintiff and the first appellate court confirmed the same. The substantial questions relates to the suit schedule property raised before this Court are only factual aspects of the case. The factual aspects with regard to the possession and the manner how the plaintiff and her mother acquired title over the suit schedule property, were elaborately dealt with by both the Courts below.

10. 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 Courts 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 plaintiff 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 question of law much less substantial question of law does arise for determination in this second appeal. Therefore, this second appeal is devoid of merit and is liable to be dismissed.

11. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 26.02.1999 passed in A.S. No.127 of 1991 on the file of the I Additional District Judge, Krishna District at Machilipatnam. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 08.08.2018
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Dr. SHAMEEM AKTHER, J