

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL No.919 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 31.07.2000 passed in A.S. No.117 of 1997 on the file of the I Additional District Judge, West Godavari at Eluru (for short, 'first appellate court'), wherein the first appellate court confirmed the judgment and decree dated 12.08.1997 passed in O.S. No.196 of 1990 on the file of the Senior Civil Judge, Kovvur, West Godavari District (for short, 'the trial court'). The original suit was filed by the respondents-plaintiffs for possession of the suit schedule property, for past profits of Rs.18,000/- or in the alternative for damages of Rs.18,000/- with interest and for future profits.

2. Though the matter is posted under the caption "For Dismissal", there is no representation for the appellants. Heard the learned counsel for the respondents and perused 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. The second appeal is filed contending that the findings of both the Courts below are contrary to law and facts of the case; the Courts below did not consider the evidence properly; the suit schedule property does not belong to late Suryanarayana Rao and it is the absolute property of Chennam Venkayamma, who is mother-in-law of the defendants' father, from whom, the defendants have title thereof; both the Courts below did not consider the evidence of D.Ws.1 and 2 and decreed the suit for declaration of title and possession; the findings of both the Courts are perverse; and ultimately, prayed to set aside the judgments and decrees of both the Courts below.

5. On the other hand, learned counsel for the respondents-plaintiffs would contend that no substantial question of law arise for determination in this second appeal; the plaintiffs have got title over the suit schedule property and they adduced the evidence of P.Ws.1 to 4 and filed documents Exs.A.1 to A.5 to prove the suit claim and the trial Court was pleased to decree the suit and the same was confirmed by the first appellate court; the findings of both the Courts below are not perverse, which are based on record; there are no grounds to interfere with the findings of both the Courts below; and ultimately, prayed to dismiss the second appeal.

6. While admitting this second appeal on 22.01.2001, this Court framed the following substantial question of law for determination:

Whether the appellants herein perfected title to the property by adverse possession on the basis of the material available on record?

7. 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 plaintiffs are the children of one Rudraraju Suryanarayana Raju, who is the original owner of the suit schedule property. During his lifetime, he leased it out to the 1st defendant for a period of five years commencing from the year 1974 on an annual rent of Rs.6,000/- for construction and running a rice mill unit. The lease expired by December, 1979. Still the 1st defendant continued to remain in possession of the property without delivering the property to the owner. The said Suryanarayana Raju got issued a legal notice dated 02.09.1982 to the 1st defendant calling upon him to vacate the suit schedule property and pay damages of Rs.500/- per month and deliver vacant possession of the site. The 1st defendant though received the same on 08.09.1982, neither gave any reply

nor paid any damages. While so, Suryanarayana Raju died intestate leaving behind him the plaintiffs and his daughters to succeed to the suit schedule property.

(b) The defendants filed written statement denying all the averments made in the plaint and contended that the registered notice dated 02.09.1982 said to have been issued to the 1st defendant is a collusive one. The suit schedule property is the absolute property of the mother-in-law of the 1st defendant by name Chennam Venkayamma, who got the said property from her parents. The plaintiffs are not entitled for any relief as prayed for, as the suit schedule property does not belong to late Suryanarayana Raju.

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

- 1) Whether the plaintiffs are entitled to recover possession of the plaint schedule property from the defendants?
- 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 plaintiffs and the evidence of D.Ws.1 and 2 adduced on behalf of the defendants, the trial Court decided the title in favour of the plaintiffs and decreed the suit filed by the plaintiffs, vide judgment and decree dated 12.08.1997, directing the defendants to deliver vacant possession of the plaint schedule property to the plaintiffs within a period of three months and also pay damages of Rs.6,000/-, i.e., at the rate of Rs.2,000/- per year for the period from July, 1987 to June, 1990, failing which the plaintiffs are at liberty to take possession of the property through process of law. The trial Court further held that a separate enquiry shall be held into the future profits on an application to be filed by the plaintiffs for their determination. Aggrieved by the said judgment and decree of the trial Court, the defendants preferred A.S. No.117 of 1997 and the

first appellate court, after appreciating the evidence on record, *vide* decree and judgment dated 31.07.2000, 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.

8. 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?

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 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.

10. The trial Court while dealing with the matter, examined the evidence of P.Ws.1 to 4 and the documents Ex.A.1-certified copy of settlement deed dated 16.07.1990 executed by the plaintiffs 1 and 2 in favour of the 3rd plaintiff, Ex.A.2-office copy of registered notice dated 02.09.1982 issued by the plaintiffs to the 1st defendant, Ex.A.3-acknowledgment of the 1st defendant dated

09.09.1982, Ex.A.4-Adangal for the year 1995-96 dated 04.11.1990 and Ex.A.5-registration extract of sale deed executed in favour of Rudraraju Suryanarayana Raju marked on behalf of the plaintiffs and the evidence of D.Ws.1 and 2 adduced on behalf of the defendants, and decided the title in favour of the plaintiffs. The adverse possession put up by the defendants was not substantiated by any oral or documentary evidence. There is conveyance of title under Ex.A.1-settlement deed in favour of the 3rd plaintiff. The trial Court held that late Suryanarayana Raju was the absolute owner of the suit schedule property and late Chennam Venkayamma has no title over the suit schedule property. Further, Ex.A.5-registration extract of sale deed shows that the father of the plaintiffs purchased the suit schedule property and some other land. The first appellate court while dealing with the subject matter, was pleased to confirm the findings of the trial Court with regard to the ownership of the suit schedule property. As regards the substantial question of law framed, i.e., whether the defendants perfected title over the suit schedule property by adverse possession, these aspects were elaborately dealt with by both the Courts below. To substantiate the contention of adverse possession, no oral or documentary evidence adduced by the defendants. Therefore, no substantial question of law does arise for determination in this second appeal with regard to adverse possession set up by the defendants.

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 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 ownership of late Suryanarayana Raju 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.

12. In the result, the Second Appeal is dismissed confirming the judgment and decree dated 31.07.2000 passed in A.S. No.117 of 1997 on the file of the I Additional District Judge, West Godavari at Eluru. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date: 21.08.2018
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Dr. SHAMEEM AKTHER, J