

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

SECOND APPEAL Nos.659 AND 670 OF 2018

COMMON JUDGMENT:

These two Second Appeals are filed under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') aggrieved by the common judgment and decrees dated 16.03.2018 passed in A.S. Nos.6 of 2011 and 21 of 2017 on the file of the XXVII Additional Chief Judge, City Civil Court, Secunderabad (for short, 'first appellate court'), wherein the common judgment and decrees dated 20.09.2007 passed in O.S. Nos.74 of 2001 and 158 of 2002 on the file of the XII Additional Senior Civil Judge (Fast Track Court), City Civil Court, Secunderabad (for short, 'the trial court'), were confirmed.

2. Heard Sri J. Prabhakar, learned counsel for the appellants, and Sri Zeeshan Adnan Mahmood, learned counsel for respondent Nos.2 and 3 in both the Second Appeals, apart from perusing the material on record.

3. Learned counsel for the appellants in S.A. No.659 of 2018 would contend that the appellants-defendant Nos.1 and 2 in O.S. No.74 of 2001 have purchased the suit schedule land from J.Hiralal, i.e., the husband of respondent No.1 and the father of respondents 2 and 3 and the possession of the suit schedule property was delivered under Ex.B.3-agreement of sale dated 06.09.1982 and a sale consideration of Rs.23,500/- was paid by the appellants to the said J.Hiralal and the possession was also obtained on that day; therefore, the suit filed by the respondents claiming title over the suit schedule property as successors of J.Hiralal is not maintainable; both the Courts below erroneously decreed the suit for title and possession; there is no specific mention of cause of action in the original plaint; there is no specific date of alleged illegal occupation of the suit schedule property by the appellants; the findings of both the Courts below are perverse; and the following substantial questions of law would arise for consideration in this Second Appeal:

A) Whether in a suit for declaration and injunction, the plaintiff is not required to establish his possession within 12 years prior to the date of suit?

B) Whether defendant Nos.1 and 2 in O.S. No.74 of 2001 and plaintiffs in O.S. No.158 of 2002 have not acquired possessory title by virtue of long standing possession (statutory period with animus)?

C) Whether the Exs.B1 to B4 and B17 do not establish possession of the appellants and prove ouster of the respondents?

D) Whether the findings recorded by both the courts below are not perverse?

E) When the defendant pleaded ouster of possession, is not obligatory on the part of the plaintiffs to prove animus and possession within 12 years prior to the suit, particularly in view of Article 65 of the Limitation Act?

4. Learned counsel for the appellants in S.A. No.670 of 2018 would further contend that the dismissal of the suit filed by the appellants-plaintiffs in O.S. No.158 of 2002 by the trial court and the confirmation of the same by the first appellate court are contrary to law and facts of the case; the appellants forfeited adverse possession of the suit schedule property more than 12 years ago; in view of the long standing possession of the appellants over the suit schedule property, the suit of the appellants would have been decreed; and the following substantial questions of law arise for consideration in this Second Appeal:

A) Whether in a suit for declaration and injunction, the plaintiff is not required to establish his possession within 12 years prior to the date of suit?

B) Whether defendant Nos.1 and 2 in O.S. No.74 of 2001 and plaintiffs in O.S. No.158 of 2002 have not acquired possessory

title by virtue of long standing possession (statutory period with animus)?

C) Whether the Exs.B1 to B4 and B17 do not establish possession of the appellants and prove ouster of the respondents?

D) Whether the findings recorded by both the courts below are not perverse?

E) When the defendant pleaded ouster of possession, is not obligatory on the part of the plaintiffs to prove animus and possession within 12 years prior to the suit, particularly in view of Article 65 of the Limitation Act?

5. On the other hand, learned counsel for respondent Nos.2 and 3 in both the Second Appeals (plaintiffs 2 and 3 in O.S. No.74 of 2001 and defendants 2 and 3 in O.S. No.158 of 2002) would contend that Sri J.Hiralal did not sell the suit schedule property at any point of time; the trial court examined Ex.B.3-agreement of sale dated 06.09.1982 and disbelieved the same; the trial court also gave a finding with regard to the cause of action and illegal occupation of the suit schedule property; both the Courts below gave concurrent findings assigning valid reasons, which are based on evidence and record; no substantial questions of law would arise for determination in these Second Appeals; and ultimately, prayed to dismiss both the Second Appeals. In support of his contentions, he relied on the following decisions:

(1) Mohan Lal (Deceased) Through his L.Rs. Kachru and others Vs. Mirza Abdul Gaffar and another¹.

(2) Moturi Seeta Ramabrahmam Vs. Bobba Rama Mohana Rao and others².

(3) Achal Reddy Vs. Ramakrishna Reddiar and others³.

¹ (1996) 1 SCC 639

² AIR 2000 AP 504 = (2000) 5 ALT 73

³ (1990) 4 SCC 706

(4) Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another⁴.

6. In view of the submissions made by both sides, the point for determination is, whether any substantial questions of law would emerge for admitting the Second Appeals and further, whether the findings of both the Courts below are perverse?

7. The record reveals that the respondents 1 to 3 herein filed O.S. No.74 of 2001 against the appellants 1 and 2 and respondent No.4 for the relief for recovery of possession of the suit schedule property which was purchased under a registered sale deed dated 16.12.1981, and for permanent injunction restraining the appellants 1 and 2 and respondent No.4 herein from making any construction in the suit schedule property. The appellants 1 and 2 and respondent No.4 herein filed O.S. No.158 of 2002 for relief of declaration of title over the suit schedule property based on adverse possession and for permanent injunction restraining the respondents 1 to 3 herein from interfering with the peaceful possession and enjoyment of the appellants 1 and 2 and respondent No.4 herein over the suit schedule property and also for relief of permanent injunction restraining respondents 1 to 3 herein from alienating the suit schedule property. The trial court tried both the suits together and recorded common evidence. On behalf of the respondents 1 to 3 herein, P.W.1 was examined and Exs.A.1 to A.11 were marked and on behalf of the appellants 1 and 2 and respondent No.4 herein, D.Ws.1 and 2 and Exs.B.1 to B.48 were marked. After considering the evidence on record, the trial Court decreed O.S. No.74 of 2001 filed by respondents 1 to 3 herein and dismissed O.S. No.158 of 2002 filed by the appellants 1 and 2 and respondent No.4 herein, vide common judgment dated 20.09.2007. Challenging the said common judgment, the appellants in both the Second Appeals preferred A.S. Nos. 6 of 2011 and 21 of 2017 and the first

⁴ (2014) 1 SCC 669

appellate court, vide common judgment dated 16.03.2018, was pleased to confirm the common judgment dated 20.09.2007 passed by the trial court. Aggrieved by the findings of both the Courts below, the appellants preferred these Second Appeals.

8. There is no dispute with regard to the ownership of J.Hiralal over the suit schedule property, who purchased the same under Ex.A.1-sale deed dated 16.12.1981. The respondents 1 to 3 are the wife and children of J.Hiralal and they are his natural successors on his demise. Both the Courts below did not believe the transactions put up by the appellants. Both the Courts below have elaborately dealt with Ex.B.3-agreement of sale dated 06.09.1982 and discarded the same assigning valid reasons. The original sale deed in respect of suit schedule property was with M.A.Razaak (D.1 in O.S. No.74 of 2001). There is also specific evidence that the respondents 1 to 3 lost possession over the suit schedule property in February, 2001 and also stated that the appellants illegally occupied the suit schedule property and encroached the same by demolition of compound wall constructed by the husband of respondent No.1 and the original sale deed was lost in a theft took place in their house in the year 1980. As per the evidence on record, the alleged agreement of sale was executed on 06.09.1982. Sri J.Hiralal was expired in the year 1987. No steps were taken by the so-called agreement holders to go for a regular sale deed. Both the Courts below held that it is a circumstance against the appellants and disbelieved the execution of Ex.B.3-agreement of sale dated 08.09.1982 by late J.Hiralal. Since the suit schedule property was originally owned by Hyderabad Asbestos Staff Co-operative Society Limited, permission is required to sell away the suit schedule property. The appellants did not file any document to show that late J.Hiralal obtained permission to sell away the suit schedule property. It is also a circumstance against the appellants. There are also other circumstances and ample evidence to substantiate the case of the respondents 1 to 3. So, in view of

the same, no substantial question of law would arise as contended in both the Second Appeals.

9. Learned counsel for the appellants has relied on decision of the Hon'ble Supreme Court in **Ramiah v. N.Narayana Reddy (Dead) by LRs**⁵, wherein it is held that the suit filed by the plaintiff in the year 1984 for possession of the property without disclosing that he was ousted from the property in 1971, Article 64 of the Limitation Act, 1963 attracted and suit, having been filed 13 years after dispossession, was barred by limitation. In the instant case, there is specific pleading and evidence on behalf of the respondents 1 to 3 with regard to the illegal occupation of the suit schedule property by the appellants and the suit is filed within 12 years of the occupation of the suit schedule property by the appellants. Now it is contended that the appellants occupied the suit schedule property on 06.09.1982 under Ex.B.3-agreement of sale. Both the Courts below analysing the said document and the other oral and documentary evidence on record, held that the appellants were not inducted in possession of the suit schedule property on 06.09.1982 and in agreement with the cause of action set up by the respondents 1 to 3. The facts of the case on hand and the facts of the decision relied on by the learned counsel for the appellants are distinct.

10. In **Mohan Lal's** case (1 supra), it is held by the Hon'ble Supreme Court that the plea based on Section 53-A of the Transfer of Property Act, 1882, is available only by way of defence. The appellants herein did not file a suit for specific performance of so-called agreement of sale deed dated 08.09.1982. In view of the said decision, the suit for declaration of title and possession is not maintainable. In **Achal Reddy's** case (3 supra), the Hon'ble Supreme Court held that the vendee getting possession of the property under agreement of sale while the parties contemplating execution of registered sale deed subsequently, the vendee in such a situation recognises title of vendor and as such cannot claim

⁵ (2004) 7 SCC 541

his possession to be adverse against vendor. In view of this citation, the plea of adverse possession against true owners, i.e., the appellants herein, is untenable.

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 with regard to the factual aspects by both the Courts below are final. Those findings of facts are not amenable to the jurisdiction of this Court by way of Second Appeal. More so, when there is no substantial question of law. The appellants must show the substantial questions of law involved so as to admit the appeal. Both the Courts below gave concurrent findings with regard to the possession and ownership of the respondents 1 to 3 over the suit schedule property and further suit property was illegally occupied by the appellants and was let out to respondent No.4. 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. In view of the facts and circumstances of the case, the findings of the Courts below are not perverse. The appellants have not made out valid and sufficient grounds calling for interference with the well considered and reasoned findings of both the Courts below. So, no re-appreciation of entire evidence is warranted in this Second Appeal. There is no question of law much less substantial question of law to admit the Second Appeals. Therefore, both Second Appeals are devoid of merit and they are liable to be dismissed at the stage of admission.

12. In the result, both the Second Appeals are dismissed, at the stage of admission, confirming the common judgment and decrees dated 16.03.2018 passed by the first appellate court in A.S. Nos.6 of 2011 and 21 of 2017.

13. Miscellaneous Petitions pending, if any, shall stand dismissed.

There shall be no order as to costs of the Second Appeal.

Dr. SHAMEEM AKTHER, J

Date: 21.08.2018
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