

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL Nos.290 and 298 OF 2013

COMMON JUDGMENT:

S.A.No.290 of 2013 is filed by the defendants, under Section 100 of C.P.C., assailing the judgment and decree dated 02.03.2013 passed in A.S.No.206 of 2010 on the file of the Court of XI Additional District and Sessions Judge, Gudivada, wherein and whereby the judgment and decree dated 23.08.2007 passed in O.S.No.440 of 2001 on the file of the Court of the Principal Junior Civil Judge at Gudivada, decreeing the suit filed by the plaintiffs for declaration and recovery of possession, was confirmed.

2. S.A.No.298 of 2013 is filed by the unsuccessful plaintiffs, under Section 100 of C.P.C., assailing the judgment and decree dated 02.03.2013 passed in A.S.No.209 of 2010 on the file of the Court of XI Additional District and Sessions Judge, Gudivada, wherein and whereby the judgment and decree dated 23.08.2007 passed in O.S.No.160 of 2000 on the file of the Court of the Principal Junior Civil Judge at Gudivada, dismissing the suit filed by the plaintiffs for declaration and consequential perpetual injunction, was confirmed.

3. Heard the learned counsel appearing for both the parties.

4. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

5. The facts leading to filing of the present second appeal, in nutshell, are as follows:

6. The pleadings in O.S.No.440 of 2001 are as follows:

It is the case of the plaintiff that her husband Jupudi Nagendrudu purchased the suit schedule property along with some other property under a registered sale deed dated 30.10.1971 from Gundu Venkata Subbayamma W/o.Narasimhulu, Vattam Hanumantha Kamala W/o.Venkata Ramaiah and Jannabotla Venkata Laxmi Bhaskaramma W/o.Purushothama Sarma. The plaintiff's husband in total purchased an extent of 557 square yards under the above sale deed. The property purchased by the husband of the plaintiff is intervened by a road. After the death of plaintiff's husband, the two daughters of her husband through his first wife and his mother filed O.S.No.39 of 1975 against the plaintiff for partition in respect of the properties of Jupudi Nagendrudu. Both parties in O.S.No.39 of 1975 entered into a compromise before the Lok Adalat. The Lok Adalat bench passed award on 31.03.1998. As per the terms of the award, the plaintiff is entitled for an extent of 557 square yards.

7. The Court Receiver by name N.Bhaskara Rao delivered the possession of part of the property situated to the south of the road and the other properties to the plaintiff herein and the suit schedule property situated to the north of the road. The Court Receiver was obstructed by the first defendant and others to deliver the possession of the suit schedule property to the plaintiff. Hence, the plaintiff filed the suit for declaration, recovery of possession and damages.

8. The defendants 1 to 3 filed their written statement denying all the averments made in the plaint *inter alia* contending that the

defendants have been in possession and enjoyment of the suit schedule property since 30 years, therefore, they acquired the title to the suit schedule property by way of adverse possession. The defendants have filed O.S.No.160 of 2000 against the plaintiff for declaration that they acquired the title to the suit schedule property by way of adverse possession. Hence, the suit is liable to be dismissed.

9. The defendants in O.S.No.440 of 2001 filed O.S.No.160 of 2000 for declaration. The plaintiffs in O.S.No.440 of 2001 filed written statement in O.S.No.160 of 2000 stating that they are the absolute owners of the suit schedule property.

10. The trial Court framed the following issues in O.S.No.440 of 2001:

1. Whether the plaintiff is entitled to declaration as prayed for?
2. Whether the plaintiff is entitled to possession of plaintiff schedule?
3. Whether the plaintiff schedule is true and correct?
4. Whether the suit is bad for non-joinder of proper and necessary parties?
5. Whether the suit of the plaintiff is within the period of limitation?
6. Whether the Court fee paid by the plaintiff is true and correct?
7. Whether the plaintiff is entitled to damages as prayed for?
8. Whether the plaintiff is entitled to future mesne profits as prayed for?
9. To what relief?

11. The trial Court framed the following issues in O.S.No.160 of 2000:

1. Whether the plaintiffs are entitled for declaration as prayed for?

2. Whether the plaintiffs are entitled for permanent injunction as prayed for?
3. To what relief?

12. The trial Court clubbed both suits and recorded evidence in O.S.No.440 of 2001.

13. On behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A1 to A7 were marked. On behalf of the defendants, D.Ws.1 to 9 were examined and Exs.B1 to B21 were marked. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiffs in O.S.No.440 of 2001 are the absolute owners of the suit schedule property and decreed the suit declaring that the plaintiffs are the owners of the suit schedule property directing the defendants to vacate the suit schedule property and hand over the same to the plaintiff. The trial Court also granted damages in favour of the plaintiffs. In O.S.No.160 of 2000, the trial Court arrived at a conclusion that the plaintiffs are not entitled for the relief of declaration and consequential permanent injunction and dismissed the suit. Feeling aggrieved by the judgment and decree in O.S.No.440 of 2001, the defendants preferred A.S.No.206 of 2010 on the file of XI Additional District Court, Gudivada. Feeling aggrieved by the judgment and decree in O.S.No.160 of 2001, the unsuccessful plaintiffs preferred A.S.No.209 of 2010 on the file of the XI Additional District Court, Gudiwada. The first appellate Court heard both the appeals and passed common order. The first appellate Court after reappraising the oral, documentary evidence and other material available on record, arrived at a conclusion that the plaintiffs in O.S.No.160 of 2000 are not entitled for the relief of

declaration and consequential perpetual injunction and dismissed the appeal. The first appellate Court arrived at a conclusion that the plaintiffs in O.S.No.440 of 2001 are entitled for the relief of declaration, recovery of possession and damages and dismissed A.S.No.206 of 2010. Feeling aggrieved by the common judgment, the present appeals are filed.

14. The substantial question of law urged by the appellants counsel is as follows:

1. Whether the Court can grant a relief of declaration basing on the latches or lacunas, if any, on the part of the defendants?
2. Whether the findings recorded by the Courts below are perverse and liable to be set aside?

15. It is the case of the plaintiff that her husband purchased an extent of 557 square yards from different individuals under a registered sale deed dated 31.10.1971, Ex.A1. As per the testimony of P.Ws.1 to 3, the husband of the plaintiff purchased the property from different persons. As seen from the testimony of P.Ws. 1 to 3, P.W.1 and others have filed O.S.No.39 of 1975 for partition. During pendency of the suit, the parties in O.S.No.39 of 1975 entered into a compromise. A compromise decree was passed in the suit. Ex.A2 is the certified copy of compromise. Ex.A3 is the final decree copy in O.S.No.39 of 1975. A perusal of the record reveals that the Court directed the Court Receiver in O.S.No.39 of 1975 to deliver the property to the plaintiff in O.S.No.440 of 2001. At the time of delivery of possession of the property, the plaintiffs in O.S.No.160 of 2000 and defendants in O.S.No.440 of 2001 obstructed the Court Receiver. As per the receiver's report, the plaintiff in O.S.No.160 of 2000 by name

Ismail was in possession of an extent of 47 square yards. As per the averments made in the plaint, the said Ismail is in possession of 27 square yards only. By examining P.Ws.1 to 3 and by marking Exs.A1 to A7 the plaintiff in O.S.No.440 of 2001 clearly established that husband purchased an extent of 557 square yards under Ex.A1. A perusal of Exs.B22 to B26, which were marked during the course of appeal, reveal that P.W.1 sold an extent of 510 square yards covered under Ex.A1 to different persons. The material available on record clinchingly establishes that the plaintiffs in O.S.No.440 of 2001 owns an extent of 26.5 square yards of vacant site i.e. suit schedule property.

16. It is the case of the defendants in O.S.No.440 of 2001 and the plaintiffs in O.S.No.160 of 2000 that they acquired title to the suit schedule property by adverse possession. Suffice it to say, a person who pleads adverse possession has to establish that he/she has been in possession and enjoyment of the suit schedule property continuously for a period of 12 years to the knowledge of one and all, more particularly to the owners of the property by setting up hostile title. In a suit for declaration, the plaintiff may succeed or fail basing on the strength or weaknesses of his/her case. The Court cannot grant relief of declaration basing on the weaknesses or lacunas, if any, on the part of the defendant.

17. Let me consider the facts of the case on hand.

18. It is not in dispute that by the time of visit of Court Receiver, the plaintiffs in O.S.No.160 of 2000 are in possession of an extent of 47 square yards. Infact, the plaintiff is claiming an extent of 26

square yards only. As seen from the testimony of D.W.1, he occupied the property with the consent of one G.Krishna Murthy. The record reveals that the wife of said G.Krishna Murthy is one of the executants of Ex.A1 sale deed. As per the testimony of D.Ws.2 and 3, the defendant occupied the suit schedule property with the consent of G.Krishna Murthy. Even assuming but not conceding that the defendant occupied the suit schedule property with the consent of G.Krishna Murthy, that itself is not a valid ground to claim adverse possession against the plaintiff, who is the owner of the suit schedule property. As per the testimony of D.Ws.4 to 8, the defendants have been in possession and enjoyment of the suit schedule property for a period of thirty years. The testimony of these witnesses is not corroborating with the testimony of D.W.1, who is a party in O.S.No.440 of 2001 and O.S.No.160 of 2000. Except the self-served testimony of D.Ws. 1 to 8, there is no other convincing evidence to establish that the defendants have been in possession and enjoyment of the suit schedule property continuously for a period of 12 years immediately preceding to filing of O.S.No.160 of 2000 by setting up hostile title to the knowledge of real owner. As per Exs.B6 to B18, the plaintiff is paying the tax to the municipality. Ex.B5 is the challan issued by Gudivada Municipality dated 30.03.1991. The defendants have not filed any document prior to 1991. Basing on material available on record, 1991 is starting point to calculate 12 years period. If 12 years is added to 1991, it comes to 2003. Admittedly, the suit is filed in the year 2000. Even if mathematical formula is applied, the defendants have not been in possession and enjoyment of the suit schedule property for a period of 12 years immediately

preceeding to filing of the suit. The oral and documentary evidence produced by the defendants falls short to establish that they acquired the title to the suit schedule property by way of adverse possession. Once the plaintiffs in O.S.160 of 2000 fails to establish their title over the suit schedule property, the plaintiff in O.S.No.440 of 2001, who is the owner of the suit schedule property, is automatically entitled for declaration of title, recovery of possession and damages. The trial Court considered the oral and documentary evidence in right perspective and arrived at a conclusion that the plaintiffs in O.S.No.160 of 2000 failed to establish that they acquired the title to the suit schedule property by adverse possession and dismissed the suit. The trial Court considered the oral and documentary evidence and arrived at a conclusion that the plaintiff in O.S.No.440 of 2001 is the owner of the suit schedule property, therefore, she is entitled to recover the suit schedule property from the defendants as well as she is entitled for damages also. The first appellate Court reappraised the oral and documentary evidence afresh, without being influenced by the findings recorded by the trial Court, and arrived at a conclusion that the plaintiffs in O.S.No.160 of 2000 are not entitled for the relief of declaration. The first appellate Court also arrived at a conclusion that the plaintiff in O.S.No.440 of 2001 is entitled for the relief sought by her.

19. If the findings recorded by the Courts below are not based on evidence or based on evidence, which is not legally admissible, then those findings can be termed as perverse. As rightly pointed out by the learned counsel for the appellant, this Court can set

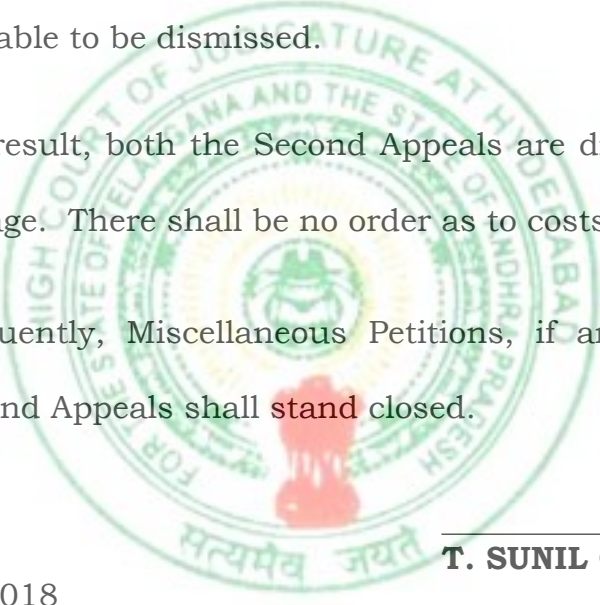
aside the perverse findings. In the instant cases, the findings recorded by the Courts below are based on evidence much less legally admissible evidence. The Courts below have assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the Courts below.

20. Having regard to the facts and circumstances of the case, this Court is of the considered view that there is no question of law much less substantial question of law to allow these appeals, while exercising the jurisdiction under Section 100 of C.P.C. Hence, the appeals are liable to be dismissed.

21. In the result, both the Second Appeals are dismissed at the admission stage. There shall be no order as to costs.

22. Consequently, Miscellaneous Petitions, if any, pending in both the Second Appeals shall stand closed.

Date: 01.11.2018
Rns



T. SUNIL CHOWDARY, J