

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

SECOND APPEAL No.331 of 2013

JUDGMENT:

This appeal is filed by the plaintiff, under section 100 CPC, assailing the judgment and decree dated 30.11.2012 passed in A.S.No.44 of 2004 on the file of VI Additional District Judge Court(Fast Track), Krishna, Machilipatnam, wherein whereby the decree and judgment dated 16.02.2004 passed in O.S.No.592 of 2001 on the file of I Additional Junior Civil Judge Court, Machilipatnam, dismissing the suit filed by the plaintiff for declaration and consequential perpetual injunction, was confirmed.

2. Heard the learned counsel for the appellant and perused the record.

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

4. The facts leading to filing of the second appeal are briefly as follows: It is the case of the plaintiff that he is the absolute owner and possessor of an extent of Ac.0.13 cents of land situated in R.S.No.320/9 and R.S.No.320/10 of Mallavolu village, Gudur Mandal, hereinafter referred to as 'suit schedule property'. The defendant is also a pensioner and residing in Mallavolu village. The plaintiff owns an extent of Ac.2.26 cents in R.S.No.115/1A, Ac.0.79 cents in R.S.No.318/9, Ac.2.01 cents in R.S.No.321/1D, Ac.0.11 cents in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10. The plaintiff purchased an extent of Ac.2.14 cents

on 31.07.1992 from one Bathina Visweswara Rao. Ever since, the plaintiff has been in possession and enjoyment of the same. As per the recitals of registered sale deed dated 31.07.1992, the plaintiff's vendor by name Bathina Visweswara Rao is the owner of an extent of Ac.2.14 cents. The plaintiff's vendor got the property under a registered partition deed. The defendant without any rights what so ever interfering with the suit schedule property. Having no other alternative, the plaintiff filed the suit for declaration and consequential perpetual injunction in respect of the suit schedule property.

5. The defendant filed written statement denying all the averments made in the plaint including the sale deed dated 31.07.1992 inter alia contending that the defendant owned land in R.S.No.320/1, R.S.No.320/02, R.S.No.320/3, R.S.No.320/4 and R.S.No.320/6 and that the plaintiff is not in possession of suit schedule property. The plaintiff got issued a notice to the surveyor marking copy of the same to the defendant. The revenue authorities measured and demarcated the land owned by the defendant at his request. The plaintiff, who is a chronic litigant, filed the present suit with an ulterior motive to grab the property of the defendant. Hence, the suit is liable to be dismissed

6. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled to a declaration that the plaintiff is the absolute owner of the ABCD property as sought for?
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
3. To what relief?

7. Before the trial Court, on behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A7 were marked. On behalf of the defendant, D.W.1 was examined and Exs.B1 to B13 were marked.

8. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the plaintiff failed to prove that he is the absolute owner of the suit schedule property and dismissed the suit filed by the plaintiff for declaration. Feeling aggrieved by the judgment and decree of the trial Court dated 16.02.2004 in O.S.No.592 of 2001, the plaintiff preferred A.S.No.44 of 2004 on the file of the VI Additional District Court (Fast Track), Krishna at Machilipatnam. The first appellate Court after reappraising the oral and documentary evidence available on record, arrived at a conclusion that the plaintiff failed to prove his title over the suit schedule property and dismissed the appeal while confirming the findings recorded by the trial Court. Hence, the unsuccessful plaintiff preferred the present second appeal.

9. The question of law urged by the appellant is that the plaintiff being the owner of an extent of Ac.0.11 cents in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10 is entitled for the relief of declaration.

10. The oral and documentary evidence placed before the trial Court clinchingly establishes that the plaintiff purchased an extent of Ac.2.01 cents in R.S.No.321/1D, Ac.0.11 cents in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10 under a registered sale deed dated 31.07.1992, Ex.A1. It is the further case of the plaintiff that his vendors got the suit schedule property under a registered

partition deed dated 19.10.1957, Ex.B1. As per the recitals of Exs.A2 to A7, the plaintiff owned an extent of Ac.0.11 cents in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10. P.W.2, who is the Village Revenue Officers, is one of the attestors of Ex.A1 sale deed. The case of the plaintiff is that his vendors left an extent of Ac.0.14 cents in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10 for the purpose of passage. It is the further case of the plaintiff that after partition in the year 1957, the vendors of the plaintiff occupied Ac.0.11 cents of land in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10, which was left for the purpose of passage. As seen from the testimony of P.W.2, they have demarcated the land in different survey numbers. The trial Court made an observation that there are some corrections in Ex.A2 pattadar pass books. Suffice it to say that in a suit for declaration, the plaintiff has to establish his case by preponderance of probabilities. It is also settled principle of law that the plaintiff may succeed or fail basing on the strength or weaknesses of his case. It is needless to say that the plaintiff is not entitled for the relief of declaration basing on the latches or lacunas, if any, on the part of the defendant.

11. Let me consider the facts of the case on hand in the light of the above legal principle.

12. The trial Court as well as the appellate Court gave a specific finding that the plaintiff purchased an extent of Ac.2.14 cents in R.S.No.320/1, 320/9 and 320/10. If the recitals of Ex.B1 are taken into consideration, the vendors of the plaintiff got an extent of Ac.2.01 cents in R.S.No.321/1 only. There is a variation between the recitals of Ex.B1 settlement deed and Ex.A1 sale deed.

A duty is cast on the plaintiff to clarify the reasons for variation between Ex.B1 and Ex.A1. There is no whisper in the testimony of P.W.2 that the vendors of the plaintiff left an extent of Ac.0.11 cents in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10 for the purpose of passage. The plaintiff has to establish that when his vendor occupied Ac.0.11 cents of land in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10. When compared to P.Ws.1 and 2, the vendors of the plaintiff are the competent persons to speak about the facts pleaded by the plaintiff. Mere assertion in the plaint itself would not amount to proof of the same. In order to succeed the suit, the plaintiff has to establish by preponderances of probabilities that his vendors occupied Ac.0.11 cents of land in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10, which is being used for the purpose of passage, after 1957 and before 1992. The evidence produced by the plaintiff falls short to establish the above said fact. Without establishing the above said fact, the plaintiff is not entitled for the relief of declaration. Both Courts gave a specific finding that the plaintiff failed to establish that his vendors had taken back an extent of Ac.0.11 cents in R.S.No.320/9 and Ac.0.02 cents in R.S.No.320/10. For one reason or the other, the plaintiff did not choose to examine his vendor to establish the above referred fact. This Court shall not lightly interfere with the concurrent finding of fact recorded by the Courts below unless there is an error apparent on the face of the record. This Court can interfere with the findings recorded by the Courts below, if the same are perverse.

13. The findings recorded by the Courts below can be termed as perverse, if the same are not based on evidence or based on

evidence, which is not legally admissible. As rightly pointed out by the learned counsel for the appellant, this Court can set aside the perverse findings. The Courts below have considered the recitals of Ex.A.1 sale deed and Ex.B.1 partition deed, in the light of the oral evidence adduced by both parties. The findings recorded by the Courts below are based on evidence much less legally admissible evidence, therefore, I am unable to accede to the contention of the learned counsel for the appellant that the findings recorded by the Courts below are perverse. In the absence of proving of above referred facts, the plaintiff is not entitled for the relief of declaration.

14. Learned counsel for the appellant submitted that the plaintiff proved his possession over the suit schedule property to an extent of Ac.0.14 cents basing on Ex.A1 sale deed, Exs.A2 and A3 revenue records, therefore, the plaintiff is entitled for perpetual injunction and that particular aspect was **not** considered by the courts below in right direction. It is needless to say the Court cannot grant the relief of declaration basing on the entries made in the revenue record. In the instant case, the relief of declaration is the main relief and the relief of perpetual injunction is only a consequential one. A party to the proceedings is not entitled for the consequential relief without proving the main relief sought for. In the present case, the plaintiff is not entitled for consequential relief of injunction in respect of the suit schedule property without establishing his title over the suit schedule property. The Courts below are right in rejecting the relief of perpetual injunction in favour of the plaintiff, therefore, I am unable to accede the contention of the learned counsel for the appellant that the

plaintiff is entitled for perpetual injunction, even though he failed to prove his title over the suit schedule property. I am fully endorsing with the findings recorded by the Courts below.

15. Having regard to the facts and circumstances of the case, I am of the considered view that there is no question of law much less substantial question of law involved in this appeal, hence, the appeal is liable to be dismissed.

16. In the result, the Second Appeal is dismissed at the admission stage. There shall be no order as to costs.

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

05.11.2018
Rns

T.SUNIL CHOWDARY, J

