

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
SECOND APPEAL Nos.1140, 1106, 1114, 1145 & 1118 of 2017

COMMON JUDGMENT:

In all these Second Appeals filed under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for brevity), an identical question is involved and, therefore, I find that it is expedient to decide all the appeals by common judgment.

2. Second Appeal Nos.1140, 1106, 1114, 1145 and 1118 2017 are preferred, challenging the decree and judgments, dated 11.08.2017, passed in A.S.Nos.97, 98, 99, 100 and 101 of 2010 respectively, by the Principal District Judge, Khammam, whereby, the decree and judgments, dated 16.08.2010, passed in O.S.Nos.533, 534, 538, 537 and 536 of 2007 respectively, by the Principal Junior Civil Judge, Khammam, were set aside.

3. The respondent No.1 in all these appeals are the plaintiffs and the appellants & respondents 2 to 4 herein are the defendants before the trial Court and for convenience and clarity, the parties will be hereinafter referred to as per their array in O.S.No.534 of 2007 before the trial Court; and, the facts, as narrated in S.A.No.1106 of 2017, will be adverted to.

4. The plaintiff filed suit for grant of perpetual injunction, restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule property, which is more fully described in the schedule annexed to the plaint,

alleging that the suit schedule property originally belonged to Gunti Appaiah, Chandrakani Narsaiah, Gandrakoti Krishna and Chintala Ramulu, who were in possession and enjoyment of the suit schedule property. The plaintiff(s) purchased the suit schedule property from them for valuable sale consideration, as shown in the below table:

Plaintiff	Plot No.	Extent
Plaintiff in O.S.No.533 of 2007/1 st respondent in S.A.No.1140 of 2017	Plot No.11	318.88 square yards in Survey No.61/2 situated at Burhanpuram, Khammam District.
Plaintiff in O.S.No.534 of 2007/1 st respondent in S.A.No.1106 of 2017	Plot No.16	291.25 square yards in Survey No.61/2 situated at Burhanpuram, Khammam District.
Plaintiff in O.S.No.538 of 2007/1 st respondent in S.A.No.1114 of 2017	Plot No.9	318.88 square yards in Survey No.61/2 situated at Burhanpuram, Khammam District.
Plaintiff in O.S.No.537 of 2007/1 st respondent in S.A.No.1145 of 2017	Plot No.10	318.88 square yards in Survey No.61/2 situated at Burhanpuram, Khammam District.
Plaintiff in O.S.No.536 of 2007/1 st respondent in S.A.No.1118 of 2017	Plot No.8	320.33 square yards in Survey No.61/2 situated at Burhanpuram, Khammam District.

5. Since the date of purchase, the plaintiff/s is/are in continuous possession and enjoyment of the suit schedule property, without any interruption by anybody. While the matter stood thus, the defendants attempted to interfere with his peaceful possession and enjoyment and therefore, sought for perpetual injunction restraining the defendants from interfering with his peaceful possession and enjoyment.

6. Defendant No.3 filed Written Statement contending that the property does not belong to the plaintiff and that he was never in possession and enjoyment of the property. The land

covered under Sy.No.61/2 belongs to Government and the Government had already demarcated the land and allotted house plots to the weaker sections and press reporters and they never interfered with the possession and enjoyment of the plaintiff and that the suit is not maintainable and defendant Nos. 1, 2 and 3 were arrayed as parties, unnecessarily.

7. Defendant No.5 filed Written Statement contending that the suit schedule property does not belong to the father of the plaintiff and, in fact, the land in Sy.No.61/2 belongs to Government and the Government assigned the said land to weaker sections and physically handicapped persons, but the plaintiff, without establishing interference by the defendants with his peaceful possession and enjoyment of the property, filed a fictitious suit. The plaintiff, without any title to the land, occupied the land in Sy.No.294 of Khanapuram Haveli and raised illegal temporary structures and that the plaintiff is not entitled to claim perpetual injunction in respect of the land in Sy.No.294 of Khanapuram Haveli, which belongs to the defendants only, and that the plaintiff has nothing to do with the property and finally prayed for dismissal of the suit.

8. Basing on the above contentions, the trial Court framed the following issues:

1. Whether the plaintiff is entitled for grant of perpetual injunction as prayed for?
2. To what relief ?

9. During trial, in O.S.No.534 of 2007, on behalf of plaintiff, PWs.1 to 3 were examined and Exs.A.1 to A.4 were marked.

On behalf of the defendants, DWs.1 to 3 were examined and Exs.B.1 and 2 were marked; in O.S.No.533 of 2007, on behalf of Plaintiff, Pws. 1 to 3 were examined and Exs. A.1 to A.5 were marked and on behalf of defendants, Dws. 1 to 3 were examined and Exs. B.1 and B.2 were marked; in O.S.No.538 of 2007, on behalf of Plaintiff, Pws.1 to 3 were examined and Exs. A.1 to A.6 were marked and on behalf of defendants, Dws. 1 to 3 were examined and Exs. B.1 and B.2 were marked; in O.S.No.537 of 2007, on behalf of plaintiff, Pws. 1 to 3 were examined and Exs. A.1 to 12 were marked and on behalf of defendants, Dws. 1 to 3 were examined and Exs. B.1 and B.2 were marked and in O.S.No.536 of 2007, on behalf of plaintiff, Pws.1 to 3 were examined and Exs. A.1 to A.24 were marked and on behalf of defendants, Dws.1 to 3 were examined and Exs. B.1 and B.2 and Exs. C.1 to C.4 were marked.

10. Upon hearing both the counsel, the trial Court, having found that the plaintiff raised construction subsequent to obtaining interim injunction in the land in Sy.No.294, declined to grant perpetual injunction and dismissed the suit.

11. Aggrieved by the Decree and Judgment of the trial Court, appeal was preferred, which were allowed by the Appellate Court, holding that the plaintiff is in possession and enjoyment of the property as on the date of filing the suit and raised constructions subsequent to obtaining interim injunction and that when the plaintiff established the threat of interference by the defendants, he is entitled to claim protection of his peaceful

possession and enjoyment, and granted perpetual injunction in favour of the plaintiff and passed a decree accordingly.

12. Aggrieved by the decree and judgments, dated 11.08.2017, passed in A.S.Nos.97, 98, 99, 100 and 101 of 2010 respectively, Second Appeal Nos.1140, 1114, 1145, 1118 and 1106 of 2017 respectively, are preferred under Section 100 of the Code, raising a specific ground that the suit schedule property in occupation of the plaintiff is in Sy.No.294 of Khanapuram Haveli, but not 61/2 of Burhanpuram of Khammam District. But, the respondents claimed right, title and possession over the land in Sy.No.294 of Khanapuram Haveli within the specified boundaries, but the appellate Court, without considering the lawful possession of the plaintiff, passed decree in their favour, restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff and thus committed an error in allowing the appeals by decreeing the suits. It is contended that the Commissioner's report filed before the trial Court is suffice to establish that the suit property is in Sy.No.294 of Khanapuram Haveli, but the Appellate Court did not consider these contentions in right perspective and committed an error.

13. During hearing, Sri Mohammed Gayasuddin appearing on behalf of Sri Kowturu Pavan Kumar, learned Counsel for the appellants and defendants 2 to 4 herein, reiterated the grounds urged in the grounds of appeals and mostly demonstrated that the property in possession of the plaintiff is in Sy.No.294 of

Khanapuram Haveli, but not in Sy.No.61/2 of Burhanpuram, Khammam District, as contended by the plaintiff and apart from that, when the plaintiffs are claiming right in the land in Sy.No.61/2, grant of perpetual injunction in respect of the property covered by Sy.No.294 of Khanapuram Haveli is erroneous and prayed to set aside the decree(s) passed by the Appellate Court, restoring the decree and judgment(s) in the Original Suit.

14. Whereas, Sri Nandigama Krishna Rao, learned counsel for respondent No.1/plaintiff supported the judgment of first Appellate Court in all respects, while contending that when the defendant No.5 himself admitted that the plaintiff raised construction after obtaining interim injunction, the said admission clinchingly establishes the fact that the plaintiff is in possession and enjoyment of the property as on the date of institution of the suit and when there is a threat to interfere with the peaceful possession and enjoyment, which gives rise to cause of action for filing a suit for injunction, the Court has to take into consideration as to who is/are in possession of the property. Therefore, the decree and judgments passed by first appellate Court are in accordance with law and do not call for any interference of this Court.

15. Though the appellants and respondents 2 to 4 herein formulated several questions as substantial questions of law in the grounds of appeal, the said questions are mostly substantial questions of fact but not substantial questions of law.

16. In a second appeal before this Court under Section 100 of the Code, the defendants have to satisfy that there is a substantial question of law to be adjudicated by this Court. What is substantial question of law depends upon the facts of each case. To be 'substantial', a question of law must be debatable, not previously settled by the law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. It will depend on the facts and circumstances of each case. Whether a question of law is a substantial one, the paramount/overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolonging the life of any *lis* (see *Boodireddy Chandraiah v. Arigela Laxmi* { (2007) 8 SCC 155} and *Santosh Hazari v Purushottam Tiwari* { (2001) (3) SCC 179}).

17. In a later judgment in *Union of India v Ibrahim Uddin*¹, the Apex Court reiterated the same meaning to the substantial question of law. Thus, in view of the meaning of substantial question of law, the facts and circumstances of the case have to be considered.

18. Reverting to the facts of the instant case, the plaintiff claimed perpetual injunction basing on possession and title and produced Exs. A.1 to A.4 i.e., Registered Sale deed, Valuation

¹ (2012) 8 SCC 148

Certificate and Property Tax Receipts, evidencing purchase of the property for a valuable consideration and payment of the property tax for the property shown in the schedule. The defendants have also produced Exs.B.1 and B.2 i.e., Registered Sale Deed and Commissioner's Report in order to substantiate their claim.

19. The main contention of the learned counsel for the appellants & respondent Nos.2 to 4 herein/defendants is that defendant No.5 is the owner of the land in Survey No.294 of Khanapuram Haveli, but the plaintiff raised construction in the said property, after obtaining interim injunction. Thus, the defendant admitted physical possession of the property by the plaintiff. Now the question is as to whether the plaintiff came into possession of the property subsequent to obtaining interim injunction or continuing in possession of the property prior to obtaining interim injunction. In the entire evidence before the Court below, the defendants could elicit nothing to establish that the plaintiff came into possession and enjoyment of the property subsequent to obtaining interim injunction, but pleaded that he raised temporary construction subsequent to obtaining interim injunction. When the plaintiff asserting that he is in possession of the schedule property and he raised constructions over the same, subsequent to interim injunction is sufficient to conclude that he is in continuous possession and enjoyment of the property. The defendants did not take any action before the trial Court complaining that he occupied the land subsequent to obtaining interim injunction in the suit.

Therefore, the question of possession as on the date of filing the suit is purely a question of fact and not a substantial question of law, which needs to be decided in a Second Appeal while exercising power under Section 100 of CPC.

20. As per the pleading in the Written Statement, the plaintiff admittedly raised construction and sought for perpetual injunction against the defendants. When the plaintiff is able to establish that he is in possession and enjoyment of the property, the plaintiff is entitled to continue his possession without any interruption by anybody, till he is duly evicted by due process of law, even assuming that the defendant No.1 is the owner of the property.

21. Therefore, in the present facts and circumstances of the case, there was judicial admission which estops defendant No.1 to disown the admission in view of Section 31 of Evidence Act; and, such admission is binding in view of Section 58 of Evidence Act. Therefore, the possession of the plaintiff was accepted by both the trial Court and the Appellate Court. However, the trial Court held that the plaintiff came into possession subsequent to obtaining interim injunction, but, the Appellate Court reversed the same based on the evidence, more particularly, the pleadings in the Written Statement.

22. When the suit is filed for injunction simplicitor, the relevant consideration is possession as on the date of filing the suit and the attempt or threat to interfere with the peaceful possession and enjoyment of the plaintiff by the defendants

which gives rise to cause of action for filing a suit for injunction. But in a suit for injunction, the Court cannot go into the title, except for the limited purpose of ascertaining the lawful possession.

23. To claim permanent injunction, the plaintiff has to establish that he is in possession and enjoyment of the suit schedule property as on the date of suit and as held by this Court in *Margadarshini Educational Society v P. Subhashan and another*². The same principle is reiterated in another judgment reported in *M. Rama Swamy v Golla Rangamma*³.

24. In *Gandham Sujatha v Kathirisetti Venkatanarassiah*⁴, a learned single Judge of this Court held that to claim permanent injunction or perpetual injunction under Section 37 and 38 of the Specific Relief Act, the plaintiff has to prove possession as on the date of filing the suit. A similar view is taken in the judgment reported in *Mohd. Ashrar Ahmed Shareef and Another v State of AP, rep. by District Collector, Hyderabad Dist and another*.

25. In view of the law declared by various Courts in the judgments referred above, to claim permanent injunction, the plaintiff has to prove his possession on the date of filing the suit besides proof of threat or attempt to interfere with his peaceful possession and enjoyment of the property by the defendants.

² 2009 (4) ALT 727

³ 2006 (4) ALD 785

⁴ AIR 1995 AP 154

26. In the case on hand, the plaintiff established his possession as on the date of filing the suit and also attempt or threat of interference with his peaceful possession and enjoyment of the property by the defendants. Apart from that, the oral evidence produced before the Court by the plaintiff and the judicial admissions in the Written Statement of the defendants are suffice to conclude that the plaintiffs is in continuous possession and enjoyment of the property and the defendants are making attempt to interfere with peaceful possession and enjoyment of the property of the plaintiff.

27. The trial Court did not consider the basic requirement to exercise jurisdiction to grant perpetual injunction or permanent injunction under Section 37 and 38 of Specific Relief Act, dismissed the suit holding that the plaintiff came into the possession after obtaining interim injunction. But the Appellate Court, on re-appraisal of entire evidence, concluded that the plaintiff is in possession and enjoyment of the property as on the date of filing the suit. The defendants also did not deny the possession claimed by the plaintiff specifically, except bare denial.

28. Yet, the main controversy is with regard to identity of the property. The plaintiff claimed title over the property in Survey No.61/2 of Burhanpuram, Khammam District, but not in Survey No.294 of Khanapuram Haveli. The categorical judicial admission of the defendants established that the plaintiff is in possession of the land within the boundaries specified in the

scheduled annexed to the plaint. If there is any conflict of identity of the land, the boundaries will prevail over Survey number and extent of land. When the defendants admitted that the plaintiff is in possession and enjoyment of the land within the four boundaries described in the schedule annexed to the plaint, the controversy with regard to possession is no more available, that to both the villages are adjacent to one another and the property in dispute is in the borders of the villages.

29. Moreover, Order VII Rule 3 of the Code mandates that where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

30. When a suit relating to immovable property has been decreed and the property is not definitely identified, the defect in the Court record caused by overlooking of provisions contained in Order VII Rule 3 and Order XX Rule 3 of the Code is capable of being cured by exercising power under Section 152 CPC.

31. In the instant case, in strict adherence to Order VII Rule 3 of the Code, a schedule with specific boundaries is annexed to the plaint. Therefore, apart from the fact that the defendants admitted that the plaintiff is in possession and enjoyment of the property and he raised constructions in the land, the survey number is insignificant while deciding the real controversy

between the parties. Hence, grant of decree by the first appellate Court reversing the decree and judgment passed by the trial Court is in accordance with law and do not call for interference of this Court while exercising power under Section 100 of the Code, since the findings are based on judicial admissions in the Written Statement and the evidence available on record. The questions raised before this Court are purely questions of fact and not substantial questions of law. Consequently, all the Second Appeals are liable to be dismissed at the stage of admission, as I find no sufficient ground to formulate substantial question of law and adjudicate.

32. In the result, all the Second Appeals are dismissed. However, the appellants & respondents 2 to 4 herein/defendants in all these appeals are at liberty to resort to appropriate proceedings for recovery of possession, subject to permissibility under law. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in all these appeals, shall stand dismissed.

M.Satyanarayana Murthy, J

24th January, 2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL Nos.1140, 1106, 1114, 1145 & 1118 of 2017

Dt.24.01.2018

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